

# EXHIBIT A

**Civil Cover Sheet**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff(s):** Wesley Forbach and Evenstar A. Forbach , ; **Defendant(s):** Tyco Fire Produces, LP; Carrier Global Corporation , ; Matlick Enterprises, Inc. dba United Fire Equipment Company

County of Residence: Coconino

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Coconino

Plaintiff's Atty(s):

**Lincoln Combs (Matthew Grosch; Shelagh Grosch) ,**  
O'STEEN & HARRISON, PLC  
300 W. Clarendon Ave., Suite 400  
Phoenix, Arizona 85013  
602-252-8888

Defendant's Atty(s):

**c/o Thomas P Burke , Attorney**  
Udall Law Firm, LP  
2198 E. Camelback Road Suite 375  
Phoenix, AZ 85016  
6022224848

**Scott F. Frerichs**  
Jennings, Strouss & Salmon, P.C.  
One East Washington Street, Suite 1900 Phoenix,  
Arizona 85004

**Miles Masog**  
Resnick & Louis  
8111 E. Indian Bend Road  
Scottsdale, Arizona 85250

**IFP REQUESTED****REMOVAL FROM Coconino COUNTY, CASE #S-0300-CV-202100277**

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties(Diversity Cases Only)

Plaintiff:- **1 Citizen of This State**

Defendant:- **5 Non AZ corp and Principal place of Business outside AZ**

IV. Origin : **2. Removed From State Court**  
V. Nature of Suit: **385 Property Damage Product Liability**

VI.Cause of Action: **Strict products liability-design defect and failure to warn, negligent failure to warn, negligent plan or design of product, and loss of consortium**

VII. Requested in Complaint

Class Action: **No**

Yes

Jury Demand:

VIII. This case **is not related** to another case.

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**Signature:** Thomas P. Burke, II

**Date:** 12/13/24

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

**SUPPLEMENTAL CIVIL COVER SHEET  
FOR CASES REMOVED FROM ANOTHER JURISDICTION**

This form must be attached to the Civil Cover Sheet at the time  
the case is filed in the United States District Clerk's Office

Additional sheets may be used as necessary.

**1. Style of the Case:**

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

<u>Party</u>	<u>Party Type</u>	<u>Attorney(s)</u>
Wesley Forbach and Evenstar A. Forbach	Plaintiffs	Lincoln Combs (025080) O'STEEN & HARRISON, PLC 300 W. Clarendon Ave., Suite 400 Phoenix, Arizona 85013-3424
Wesley Forbach and Evenstar A. Forbach	Plaintiffs	Kerry Miller (PHV) Jason W. Burge Danielle Teutonico FISHMAN HAYGOOD LLP 201 St. Charles Ave., Floor 46 New Orleans, Louisiana 70170 504.586.5252
Wesley Forbach and Evenstar A. Forbach	Plaintiffs	Paul J. Napoli (PHV) NAPOLI SHKOLNIK NSPR LAW SERVICES, LLC 1302 Avenida Ponce de Leon Santurce, Puerto Rico 00907 T: (787) 493-5088

**2. Jury Demand:**

Was a Jury Demand made in another jurisdiction? Yes ☒ No ☐

If "Yes," by which party and on what date?

Matlick Enterprises, Inc dba United Fire Equipment Company

07/29/2001

**3. Answer:**

Was an Answer made in another jurisdiction? Yes ☐ No ☒

If "Yes," by which party and on what date?



**4. Served Parties:**

The following parties have been served at the time this case was removed:

<u>Party</u>	<u>Date Served</u>	<u>Method of Service</u>
Chemguard, Inc.,	N/A	
Perimeter Solutions	N/A	
Matlick Enterprises, Inc	8/13/2021	Wavier and Acceptance of Service

**5. Unserved Parties:**

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason Not Served</u>

**6. Nonsuited, Dismissed or Terminated Parties:**

Please indicate changes from the style of the papers from another jurisdiction and the reason for the change:

<u>Party</u>	<u>Reason for Change</u>

**7. Claims of the Parties:**

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claims</u>
Plaintiffs	(1) Strict Products Liability-Design Defect and Failure to Warn;(2) Failure to Warn; (3) Negligent Plan or Product of Design; (4) Punitive Damages
Plaintiffs	(5) Loss of Consortium

**Pursuant to 28 USC § 1446(a) a copy of all process, pleadings, and orders served in another jurisdiction (State Court) shall be filed with this removal.**

**1. STYLE OF CASE (continued)**

<b><u>Party</u></b>	<b><u>Party Type</u></b>	<b><u>Attorney(s)</u></b>
Tyco Fire Products LP	Defendant	Thomas P. Burke (009631) Udall Law Firm, LLP 2198 E. Camelback Road Suite 375 Phoenix, AZ 85016 602.222.4848
Carrier Global Corporation	Defendant	Scott F. Frerichs Jennings Strouss & Salmon One E Washington, #1900 Phoenix, AZ 85250 480-425-2622
Matlick Enterprises, Inc dba United Fire Equipment Company	Defendant	Miles Masog RESNICK & LOUIS, P.C. 8111 E. Indian Bend Road Scottsdale, AZ 85250 602.456.6776

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Thomas P. Burke, II SBN 9631  
Attorneys for Tyco Fire Products LP

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Wesley Forbach and Evenstar A. Forbach,

Plaintiffs,

vs.

Tyco Fire Products, LP; Carrier Global  
Corporation, and Matlick Enterprises, Inc.,  
d/b/a United Fire Equipment Company,

Defendants.

NO.

Coconino County Superior Court No.  
S-0300-CV-202100277

**DECLARATION OF THOMAS P.  
BURKE**

I, Thomas P. Burke, II, declare under penalty of perjury under the laws of the United States of America that the following statements are true and correct, to the best of my knowledge:

1. I am an attorney of record for defendant Tyco Fire Products, LP in this case.
2. As is required of me under LRCiv 3.6 (b)(10), I verify that, to the best of my knowledge and belief, defendant's Notice of Removal contains true and complete copies of all pleadings and other documents filed as of May 20, 2021 in the case of Wesley Forbach and Evenstar A. Forbach v. Tyco Fire Products, LP et al, Case No. S-0300-CV-202100277,

1 while the case was pending in the Superior Court of the State of Arizona, County of  
2 Coconino.

3  
4 DATED this 13<sup>th</sup> day of December, 2024

5  
6 

7 Thomas P. Burke, II.  
8 Attorney for Defendants  
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Person/Attorney Filing: Patrick J McGroder III  
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[ ☐ ] Representing Self, Without an Attorney  
(If Attorney) State Bar Number: 002598, Issuing State: AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCONINO

Wesley Forbach, et al.  
Plaintiff(s),  
v.  
Chemguard, Inc, et al.  
Defendant(s).

Case No.

**CERTIFICATE OF  
COMPULSORY ARBITRATION**

I certify that I am aware of the dollar limits and any other limitations set forth by the Local Rules of Practice for the Coconino County Superior Court, and I further certify that this case IS NOT subject to compulsory arbitration, as provided by Rules 72 through 77 of the Arizona Rules of Civil Procedure.

RESPECTFULLY SUBMITTED this

By: Patrick J McGroder III /s/  
Plaintiff/Attorney for Plaintiff

**BEUS GILBERT MCGRODER PLLC**

ATTORNEYS AT LAW

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*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF COCONINO**

WESLEY FORBACH and EVENSTAR A.  
FORBACH, individually, and as husband and  
wife,

Plaintiffs,

v.

CHEMGUARD, INC.; A Wisconsin corporation;  
PERIMETER SOLUTIONS LP, a Delaware  
limited partnership; and MATLICK  
ENTERPRISES, INC., an Arizona corporation,

Defendants.

No.

**COMPLAINT**

For their Complaint against Defendants Chemguard, Inc. ("Chemguard"),  
Perimeter Solutions, LP ("Perimeter"), and Matlick Enterprises, Inc., d/b/a United Fire



Equipment Company (“United Fire” and, collectively with Chemguard, and Perimeter, “Defendants”), Plaintiffs Wesley Forbach and Evenstar A. Forbach (“Plaintiffs”), through undersigned counsel, hereby allege, based upon information and belief, as follows:

### **INTRODUCTION**

1. Plaintiff Wesley Forbach (“Wes”) has been a firefighter for over thirteen years. Throughout that period, he worked with aqueous film-forming foams (“AFFFs”) containing the toxic chemicals collectively known as per and polyfluoroalkyl substances (“PFAS”). PFAS include, but are not limited to, perfluorooctanoic acid (“PFOA”) and perfluorooctane sulfonic acid (“PFOS”) and related chemicals including those that degrade to PFOA and/or PFOS.

2. AFFFs are used by fire departments, including the departments where Wes worked, to extinguish fires. Wes was exposed to AFFFs in training sessions, while fighting fires, and, after a fire was extinguished, by “painting” rooms, which entails coating every surface with a thick concentration of foam to prevent fires from rekindling. Throughout his career, Wes had routine dermal exposure to AFFFs.

3. Defendants designed, marketed, developed, manufactured, distributed, released, trained users, produced instructional materials, promoted, sold, and/or otherwise released into the stream of commerce AFFFs with knowledge that they contained highly toxic PFAS, which would expose end users of the product to the risks associated with PFAS. Each of the Defendants supplied AFFFs, either on a manufacturer or distributor basis, to the Flagstaff Fire Department that employs Wes.

4. PFAS accumulates in the blood and bodily tissues of humans exposed to the material and persists for long periods of time. These are highly toxic and

1 carcinogenic chemicals. Defendants knew, or should have known, that PFAS present  
2 significant health risks to humans who are exposed to them.

3 5. In his role as a firefighter, Wes used Defendants' AFFFs in their intended  
4 manner, without material change in the products' condition, and in a manner that  
5 Defendants were aware that firefighters like Wes would use the product. Wes was  
6 unaware of the toxic nature of the PFAS in AFFFs – indeed, Defendants represented  
7 that their foam products were as safe as dish soap.

8 6. After more than a decade of exposure to AFFFs, Wes was diagnosed with  
9 testicular cancer. Wes' consumption, and/or dermal absorption of Defendants' AFFF  
10 products caused him to develop the serious medical conditions and complications  
11 alleged herein.

12 7. Through this action, Wes and his wife, Evenstar, seek to recover for the  
13 permanent and significant damages sustained as a direct consequence of his exposure to  
14 Defendants' AFFF products during the course of Wes' training and firefighting  
15 activities.

16 **PARTIES, JURISDICTION, AND VENUE**

17 8. Plaintiffs are a married couple residing in Coconino County, Arizona.

18 9. Defendant Chemguard, Inc. ("Chemguard") is a Wisconsin corporation  
19 and does business throughout the United States, including in Coconino County,  
20 Arizona. Chemguard designed, marketed, developed, manufactured, distributed,  
21 released, trained users, produced instructional materials, and/or sold AFFFs containing  
22 PFAS that are used in firefighting training and response exercises that are the subject of  
23 this Complaint.

24 10. Defendant Perimeter Solutions, LP, as successor-in-interest to Auxquimia,  
25 S.A.U. ("Perimeter") is a Delaware limited partnership and does business throughout



1 the United States, including in Coconino County, Arizona. Perimeter designed,  
2 marketed, developed, manufactured, distributed, released, trained users, produced  
3 instructional materials, and/or sold AFFFs containing PFAS that are used in firefighting  
4 training and response exercises that are the subject of this Complaint.

5 11. Defendant Matlick Enterprises, Inc., d/b/a United Fire Equipment  
6 Company (“United Fire”), is an Arizona corporation and does business throughout this  
7 state, including in Coconino County. United Fire marketed, distributed, and/or sold  
8 AFFFs containing PFAS that are used in firefighting training and response exercises  
9 that are the subject of this Complaint.

10 12. Chemguard and Perimeter are hereafter referred to as the “Manufacturer  
11 Defendants.” United Fire are hereafter referred to as the “Distributor Defendant.”

12 13. Defendants have caused events to occur in Coconino County, Arizona, out  
13 of which all claims stated herein arise, and venue is proper in this Court pursuant to  
14 A.R.S. § 12-401.

15 14. The amount in controversy exceeds the Court’s minimum jurisdictional  
16 amount.

17 15. The Court has jurisdiction of this action pursuant to Article VI, section 14  
18 of the Arizona Constitution and A.R.S. § 12-123.

19 **GENERAL ALLEGATIONS**

20 16. Aqueous Film-Forming Foam (“AFFF”) is a combination of chemicals  
21 used to extinguish fires.

22 17. AFFF has better firefighting capabilities than water because of its unique  
23 properties, which extinguish fires by smothering them, ultimately starving them of  
24 oxygen.  
25

1           18.   AFFFs can be used to fight fires directly in conjunction with or in place of  
2 water, or they can be used to insulate premises that were previously on fire, to prevent  
3 fire from reigniting.

4           19.   AFFF was introduced commercially in the mid-1960s and rapidly became  
5 the primary firefighting foam in the United States and other parts of the world. AFFF  
6 contains PFAS, which are highly fluorinated synthetical chemical compounds whose  
7 family includes PFOS and PFOA.

8           20.   PFAS have been used for decades in the manufacture of AFFF. PFAS  
9 chemicals are entirely manmade and do not naturally occur.

10          21.   Prior to commercial development and large-scale manufacture and use of  
11 AFFF containing PFAS, no such PFAS had been found or detected in humans.

12          22.   AFFF and PFAS are associated with various adverse health effects in  
13 humans.

14          23.   Exposure to AFFF has been linked to serious medical conditions  
15 including, but not limited to, kidney cancer, testicular cancer, testicular tumors,  
16 pancreatic cancer, prostate cancer, leukemia, lymphoma, bladder cancer, thyroid  
17 disease, and infertility.

18          24.   In the 1960s, studies by PFAS manufacturers raised concerns about the  
19 health risks caused by these substances.<sup>1</sup>

20          25.   By the 1970s, animal studies of PFAS revealed immunotoxicity and other  
21 adverse effects.

22          26.   By the 1980s, studies by PFAS manufacturers reported immunotoxicity  
23 and carcinogenicity effects caused by PFAS.

24 \_\_\_\_\_  
25 <sup>1</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6172956/>

1           27. By the 1990s, certain PFAS manufacturers began monitoring the levels of  
2 PFAS in the blood serum of their workers. Studies began showing an excess occurrence  
3 of prostate cancer in individuals exposed to PFAS.

4           28. By at least 2010, additional research and testing performed by certain  
5 PFAS manufacturers revealed multiple potential adverse health impacts among workers  
6 exposed to PFAS, such as increased cancer incidence, hormone changes, lipid changes,  
7 and thyroid and liver impacts.

8           29. After the USEPA and other entities began asking manufacturers to stop  
9 manufacturing and/or using certain PFAS, Defendants began manufacturing and/or  
10 distributing more of certain other and/or “new” PFAS, including so-called “Short-Chain  
11 PFAS.”

12           30. Defendants manufacturing and/or distributing Short-Chain PFAS are  
13 aware that Short-Chain PFAS have also been found in human blood. By the mid-2010s,  
14 manufacturers were aware that certain Short-Chain PFAS have been found to cause the  
15 same triad of tumors (testicular, liver, and pancreatic) in animals as non-Short-Chain  
16 PFAS.

17           31. Moreover, by the early 2010s, research on Short-Chain PFAS suggested  
18 that the technical performance of these Short-Chain PFAS is lower, requiring larger  
19 quantities and/or more substances to be used to provide the same performance, leading  
20 to the same aggregate exposure for affected humans.

21           32. Nonetheless, Defendants each downplayed the risks of AFFFs containing  
22 PFAS to firefighters like Wesley Forbach. Defendant Chemguard, for instance,  
23 represented that its AFFFs were “not a carcinogen,” and that skin exposure caused only  
24 a “minimal irritant.” Defendant Perimeter Solutions represented that skin contact was  
25 “no more than slightly toxic.”

1           33. Even after an independent science panel, known as the “C8 Science  
2 Panel,” announced in the 2010s that human exposure to PFAS were associated with  
3 certain human diseases, including kidney and testicular cancer,<sup>2</sup> Defendants continued  
4 to downplay the risk of AFFFs.

5           34. At all relevant times, Manufacturer Defendants, through their acts and  
6 omissions, concealed and/or withheld information from their customers, governmental  
7 entities, and the public that would have properly and fully alerted Plaintiff to the risks of  
8 exposure to AFFFs containing PFAS.

9           35. At all relevant times, Defendants encouraged continued and increased use  
10 of PFAS by their customers and others and tried to encourage and foster the increased  
11 and further use of PFAS through the promotion of AFFFs to fire departments, including  
12 the fire department where Wesley Forbach works, while downplaying the risks.

13           36. At all relevant times, Manufacturer Defendants were and/or should have  
14 been aware, or knew and/or should have known, that their design, marketing,  
15 development, manufacture, distribution, release, training and response of users,  
16 production of instructional materials and/or sale of AFFFs containing PFAS would  
17 result in the contamination of the blood and/or body of Wesley Forbach with PFAS,  
18 causing injury, irreparable harm, and/or unacceptable risk of such injury and/or  
19 irreparable harm to Wesley Forbach.

20           **Defendants’ AFFFs were used by the Flagstaff Fire Department**

21           37. Defendants designed, marketed, developed, manufactured, distributed,  
22 released, trained users, produced instructional materials, and/or sold AFFFs containing  
23

24 \_\_\_\_\_  
25 <sup>2</sup> <https://ehp.niehs.nih.gov/doi/pdf/10.1289/ehp.1306615>

1 toxic PFAS that were used by fire departments around the country, including county and  
2 municipal firefighting departments.

3 38. Defendants each designed, marketed, developed, manufactured,  
4 distributed, released, trained users, produced instructional materials, and/or sold AFFFs  
5 containing PFAS in such a way as to cause the exposure to and ultimate contamination  
6 of Wesley Forbach's blood and body with PFAS, resulting in persistence and  
7 accumulation of PFAS in his blood and body.

8 39. Each of the Defendants manufactured, sold, and/or distributed AFFFs to  
9 the Flagstaff Fire Department, thereby causing the contamination of the blood and/or  
10 body of Wesley Forbach with PFAS.

11 40. Chemguard manufactured and/or sold AFFFs, including Chemguard  
12 Directattack Class A Foam and Class A Plus Foam to Flagstaff Fire Department, based  
13 upon information and belief, during all relevant time periods. Chemguard's AFFFs  
14 were used by firefighters in the Flagstaff Fire Department, including Wesley Forbach, in  
15 their ordinary course of firefighting activities and in the manner in which these AFFFs  
16 were expected to be used by Chemguard, thereby exposing Wesley Forbach to PFAS.

17 41. Perimeter manufactured and/or sold AFFFs, including Phos-Chek first  
18 Response Foam to the Flagstaff Fire Department, based upon information and belief,  
19 during all relevant time periods. Perimeter's AFFFs were used by firefighters in the  
20 Flagstaff Fire Department, including Wesley Forbach, in their ordinary course of  
21 firefighting activities and in the manner in which these AFFFs were expected to be used  
22 by Chemguard, thereby exposing Wesley Forbach to PFAS.

23 42. United Fire distributed AFFFs to the Flagstaff Fire Department, based  
24 upon information and belief, during all relevant time periods. AFFFs distributed by  
25 United Fire were used by firefighters in the Flagstaff Fire Department, including

1 Wesley Forbach, in their ordinary course of firefighting activities and in the manner in  
2 which these AFFFs were expected to be used by United Fire, thereby exposing Wesley  
3 Forbach to PFAS.

4 **The Plaintiff's exposure to Defendants' AFFFs**

5 43. Wesley Forbach and his wife, Evenstar A. Forbach, have been happily  
6 married since August 2004.

7 44. Wesley Forbach began his fire service career in 2007, with the Flagstaff  
8 Fire Department, serving the City of Flagstaff, Arizona.

9 45. Wes was first exposed to AFFFs in the Flagstaff Fire Department  
10 academy, where he trained with Class A and B firefighting foams. During training, it  
11 was common to have AFFFs on his body from head to toe, and it was common to have  
12 direct skin contact with AFFFs while cleaning up after drills. At the time, he was led to  
13 believe that the foam was generally inert and provided no hazard to his health. After his  
14 training, in service as a firefighter, Wes was exposed to AFFFs while spraying foam  
15 during firefighting operations.

16 46. Wes' responsibilities included driving, pumping, and maintaining the fire  
17 truck, which included pumping AFFFs, cleaning AFFFs out of the firefighting  
18 equipment, and adding new foam as needed. While operating and cleaning equipment  
19 using foam, he was never given any instruction from the manufacturers of distributors to  
20 avoid contact with AFFFs, or that the materials were otherwise harmful. In fact, Wes  
21 was told that AFFF was simply extra concentrated dish soap and posed no health  
22 threats.

23 47. Firefighters who regularly expect to fight aircraft fires obtain an Aircraft  
24 Rescue Firefighting ("ARF") certification. Wes is not, and never was, ARF certified. He  
25 has never fought an aircraft fire.



1 foreseeable by Defendants. The AFFFs were used in substantially the same condition in  
2 which they were sold.

3 55. A reasonable firefighter would not expect the AFFFs used in training  
4 activities and routine firefighting activities to expose him to a known carcinogen.

5 56. AFFFs failed to perform as safely as an ordinary firefighter would expect  
6 when the AFFFs were used in the reasonably foreseeable manner of routine firefighting  
7 activities.

8 57. Defendants designed an unreasonably harmful product that was inherently  
9 defective in that it contained known carcinogens.

10 58. Defendants had full knowledge that AFFFs contained known carcinogens  
11 and failed to warn Plaintiffs of the unreasonably dangerous risks.

12 59. Wesley Forbach has suffered lasting and ongoing personal injuries  
13 resulting from the defective and unreasonably dangerous nature of the product caused  
14 by its defective design.

15 60. Wesley Forbach was a healthy middle-aged man who had fully recovered  
16 from testicular cancer, making his likelihood of developing the disease a second time  
17 quite low.

18 61. As a direct and proximate result of the foregoing, Plaintiffs have been  
19 damaged, both via personal injuries and through loss of consortium, in an amount to be  
20 proven at trial.

21 **SECOND CLAIM FOR RELIEF**

22 **(Negligent Failure to Warn Against Manufacturing Defendants)**

23 62. Plaintiffs incorporate the allegations contained in paragraphs 1 through 61  
24 of this Complaint as if they were fully set forth herein.  
25





1           72. Upon information and belief, Defendants Chemguard and Perimeter  
2 Solutions (the “Manufacturer Defendants”) first started manufacturing, marketing, and  
3 selling AFFFs many years ago.

4           73. Over the ensuing years, the Manufacturer Defendants either knew or  
5 should have known that an increasing volume of industry research demonstrated that  
6 AFFFs cause serious medical effects in humans who are exposed to them dermally,  
7 including tissue cancers such as testicular cancer. Throughout that period, and up to the  
8 present, the Manufacturer Defendants have never warned firefighters or the broader  
9 public of the known health risks of AFFFs.

10           74. The Manufacturer Defendants had obligations under various laws,  
11 including but not limited to 15 U.S.C. § 2607(3), to disclose to various government  
12 agencies the health risks of AFFFs containing PFAS, including in particular the  
13 carcinogenic effects of these products of which the Manufacturer Defendants were  
14 aware. Nonetheless, the Manufacturer Defendants intentionally withheld from  
15 applicable government agencies their knowledge of the hazardous health effects AFFFs  
16 can cause to fire fighters like Wesley Forbach.

17           75. The Manufacturer Defendants consciously pursued this course of conduct  
18 – the manufacture, marketing, and sale of a deficient and dangerous product with no  
19 representation to expected users of this known danger – in order to serve their own  
20 profit motives.

21           76. The Manufacturer Defendants pursued the actions set forth above despite  
22 their knowledge of the substantial risk that AFFFs posed to firefighters like Wesley  
23 Forbach.

24           77. The Manufacturer Defendants acted with an evil mind, meriting an award  
25 of punitive damages in an amount to be proven at trial.

**FIFTH CLAIM FOR RELIEF**

**(Loss of Consortium)**

78. Plaintiffs incorporate the allegations contained in paragraphs 1 through 77 of this Complaint as if they were fully set forth herein.

79. Evenstar A. Forbach is and was at all times relevant to this action, the legal spouse of Wesley Forbach, and they have at all times relevant to this action, lived together as husband and wife.

80. As a proximate result of the personal injuries suffered by Wesley Forbach, as described in this complaint, Evenstar A. Forbach has been deprived of the benefits of their marriage including his love, affection, society, and consortium, and other husbandly duties and actions. Wesley Forbach provided Evenstar A. Forbach with all of the benefits of a marriage between husband and wife, prior to his exposure to Defendants' hazardous AFFFs and the resulting injuries described herein.

81. Evenstar A. Forbach has also incurred the costs and expenses related to the medical care, treatment, medications, and hospitalization to which Wesley Forbach was subjected for the physical injuries he suffered as a proximate result of his use of the Defendants AFFFs. Evenstar A. Forbach will continue to incur the future costs and expenses related to the care, treatment, medications, and hospitalization of Wesley Forbach due to his injuries from exposure to Defendants' hazardous AFFFs.

82. Evenstar A. Forbach has suffered loss of consortium, as described herein, including the past, present, and future loss of her husband's companionship, services, society, and the ability of Wesley Forbach to provide Evenstar A. Forbach with the benefits of marriage, all of which has resulted in her pain, suffering, and mental and emotional distress and worry.

**RULE 26.2 TIER ALLEGATION**

Due to Plaintiffs' extensive medical bills, ongoing treatment, and losses, Plaintiffs are entitled to damages at a Tier 3 level within the criteria of Rule 26.2(c)(3).

**WHEREFORE**, Plaintiffs Wesley and Evenstar A. Forbach hereby request that the Court enter judgment against all Defendants as follows:

a. For general, consequential, special, and compensatory damages, including but not limited to pain and suffering, mental anguish, lost wages, lost future income, and loss of consortium;

b. For Plaintiffs' costs and other expenses incurred in this action; and

c. Such other and further relief as the Court deems just.

**WHEREFORE**, Plaintiffs Wesley and Evenstar A. Forbach hereby request that the Court additionally enter judgment against the Manufacturer Defendants as follows:

a. For punitive damages.

DATED this 20<sup>th</sup> day of May, 2021.

**BEUS GILBERT MCGRODER PLLC**

By /s/ Patrick J. McGroder III

Patrick J. McGroder III

Patrick J. McGroder IV

**FISHMAN HAYGOOD LLP**

Kerry J. Miller

Jason W. Burge

Danielle Teutonico

*Attorneys for Plaintiffs*

**RESNICK & LOUIS, P.C.**

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*Attorney for Defendant Matlick Enterprises, Inc.*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA****IN AND FOR THE COUNTY OF COCONINO**

WESLEY FORBACH and EVENSTAR A.  
FORBACH, individually, and as husband and  
wife,

Plaintiff,

v.

CHEMGUARD, INC.; A Wisconsin  
corporation; PERIMETER SOLUTIONS LP,  
A Delaware limited partnership; and  
MATLICK ENTERPRISES, INC., an Arizona  
corporation,

Defendants.

Case No. S0300CV202100277

**DEFENDANT MATLICK  
ENTERPRISES, INC.S DEMAND  
FOR JURY TRIAL**

Pursuant to Rule 38(b), Ariz. R. Civ. P., Defendant MATLICK ENTERPRISES, INC., demands a jury trial on all issues in the above-entitled action.

**DATED** this 29<sup>th</sup> day of July, 2021.

**RESNICK & LOUIS, P.C.**

By: /s/ Sharon A. Briggs

Sharon A. Briggs, Esq.  
8111 E. Indian Bend Road  
Scottsdale, Arizona 85250

*Attorney for Defendant Matlick Enterprises,  
Inc.*

1 **ORIGINAL** of the foregoing  
2 e-filed via TurboCourt this 29th  
3 day of July, 2021, with:

4 Clerk of the Court  
5 Coconino County Superior Court

6 **COPY** mailed/e-mailed  
7 this same date to:

8 Patrick J. McGroder, III, Esq.  
9 BEUS GILBERT McGRODER, PLLC  
10 701 N. 44<sup>th</sup> Street  
11 Phoenix, AZ 85008  
12 [p3@beusgilbert.com](mailto:p3@beusgilbert.com)  
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13 Kerry Miller, Esq.  
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*Co-Counsel for Plaintiff*

18  
19 By: /s/ LaWanda Brice  
20 LaWanda Brice  
21 An Employee of Resnick & Louis, P.C.  
22  
23  
24  
25  
26  
27  
28



**RESNICK & LOUIS, P.C.**

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*Attorney for Defendant Matlick Enterprises, Inc.*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA****IN AND FOR THE COUNTY OF COCONINO**

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A Delaware limited partnership; and  
MATLICK ENTERPRISES, INC., an Arizona  
corporation,

Defendants.

Case No. S0300CV202100277

**DEFENDANT MATLICK  
ENTERPRISES, INC.S  
CERTIFICATE REGARDING  
COMPULSORY ARBITRATION**

The undersigned files this Certificate Regarding Compulsory Arbitration and states,  
pursuant to Rules 72 through 76 of the Arizona Rules of Civil Procedure that Defendant  
chooses not to contest Plaintiff's assertion that this case is not subject to compulsory  
arbitration.

///





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*Attorney for Defendant Matlick Enterprises, Inc.*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA****IN AND FOR THE COUNTY OF COCONINO**

WESLEY FORBACH and EVENSTAR A.  
FORBACH, individually, and as husband and  
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CHEMGUARD, INC.; A Wisconsin  
corporation; PERIMETER SOLUTIONS LP,  
A Delaware limited partnership; and  
MATLICK ENTERPRISES, INC., an Arizona  
corporation,

Defendants.

Case No. S0300CV202100277

**DEFENDANT MATLICK  
ENTERPRISES, INC.'S ANSWER  
TO COMPLAINT**

COMES NOW Defendant Matlick Enterprises, Inc. (hereinafter "Matlick"), through undersigned counsel, and hereby submits its Answer to Plaintiffs' Complaint as follows. Matlick denies each and every allegation of the Complaint not expressly admitted or qualified herein.

1. Answering Paragraph 1 of the Complaint, Matlick is without sufficient information to form a belief regarding the truth or falsity of the allegations therein and, therefore, denies the same.

1           2.     Answering Paragraph 2 of the Complaint, Matlick is without sufficient  
2 information to form a belief regarding the truth or falsity of the allegations therein and,  
3 therefore, denies the same.  
4

5           3.     Answering Paragraph 3 of the Complaint, Matlick denies the allegations of this  
6 paragraph as to itself; with respect to other defendants, Matlick is without sufficient  
7 information to form a belief regarding the truth or falsity of the allegations therein and,  
8 therefore, denies the same.  
9

10          4.     Answering Paragraph 4 of the Complaint, Matlick is without sufficient  
11 information to form a belief regarding the truth or falsity of the allegations therein and,  
12 therefore, denies the same.  
13

14          5.     Answering Paragraph 5 of the Complaint, Matlick is without sufficient  
15 information to form a belief regarding the truth or falsity of the allegations therein and,  
16 therefore, denies the same.  
17

18          6.     Answering Paragraphs 6, 7 and 8 of the Complaint, Matlick is without  
19 sufficient information to form a belief regarding the truth or falsity of the allegations therein  
20 and, therefore, denies the same.  
21

22          7.     Answering Paragraphs 9 and 10 of the Complaint, Matlick does not believe  
23 that the allegations of these paragraphs pertain to it and thus no response would be required  
24 of it. To the extent that the Court would deem a response to the allegations of these  
25 paragraphs is necessary, Matlick is without sufficient information to form a belief regarding  
26 the truth or falsity of the allegations therein and, therefore, denies the same.  
27  
28

1           8.     Answering Paragraph 11 of the Complaint, Matlick admits that it is an Arizona  
2 corporation doing business throughout Arizona, including Coconino County, and denies the  
3 remaining allegations of this paragraph.  
4

5           9.     Answering Paragraph 12 of the Complaint, Matlick asserts that this paragraph  
6 contains only statements of counsel to which no response would be required.  
7

8           10.    Answering Paragraph 13 of the Complaint, Matlick admits that venue is proper  
9 in this court and denies the remaining allegations of this paragraph.

10          11.    Matlick admits the allegations of Paragraphs 14 and 15 of the Complaint upon  
11 information and belief.  
12

13          12.    Answering Paragraphs 16 through 30, inclusive, of the Complaint, Matlick is  
14 without sufficient information to form a belief regarding the truth or falsity of the allegations  
15 therein and, therefore, denies the same.  
16

17          13.    Answering Paragraphs 31, 32 and 33 of the Complaint, Matlick denies the  
18 allegations therein as to itself. With respect to the other defendants, Matlick is without  
19 sufficient information to form a belief regarding the truth or falsity of the allegations therein  
20 and, therefore, denies the same.  
21

22          14.    Answering Paragraph 34 of the Complaint, Matlick does not believe that the  
23 allegations of these paragraphs pertain to it and thus no response would be required of it. To  
24 the extent that the Court would deem a response to the allegations of these paragraphs  
25 necessary, Matlick is without sufficient information to form a belief regarding the truth or  
26 falsity of the allegations therein and, therefore, denies the same.  
27  
28

1           15. Answering Paragraph 35 of the Complaint, Matlick denies the allegations  
2 therein as to itself. With respect to the other defendants, Matlick is without sufficient  
3 information to form a belief regarding the truth or falsity of the allegations therein and,  
4 therefore, denies the same.  
5

6           16. Answering Paragraph 36 of the Complaint, Matlick does not believe that the  
7 allegations of these paragraphs pertain to it and thus no response would be required of it. To  
8 the extent that the Court would deem a response to the allegations of these paragraphs  
9 necessary, Matlick is without sufficient information to form a belief regarding the truth or  
10 falsity of the allegations therein and, therefore, denies the same.  
11  
12

13           17. Answering Paragraphs 37 and 38 of the Complaint, Matlick denies the  
14 allegations therein as to itself and avers that it did not sell AFFFs manufactured by these  
15 Manufacturer Defendants to the Flagstaff Fire Department during the relevant time frame.  
16 Matlick asserts that it sold only Class A foam manufactured by Chemguard, Inc., to the  
17 Flagstaff Fire Department during the relevant time frame. With respect to the remaining  
18 allegations of this paragraph with respect to the other defendants, Matlick is without  
19 sufficient information to form a belief regarding the truth or falsity of the allegations therein  
20 and, therefore, denies the same.  
21  
22

23           18. Matlick denies the allegations of Paragraph 39 of the Complaint as to itself.  
24 With respect to the remaining allegations of this paragraph with respect to the other  
25 defendants, Matlick is without sufficient information to form a belief regarding the truth or  
26 falsity of the allegations therein and, therefore, denies the same.  
27  
28

1           19. Answering Paragraphs 40 and 41 of the Complaint, Matlick does not believe  
2 that the allegations of these paragraphs pertain to it and thus no response would be required  
3 of it. To the extent that the Court would deem a response to the allegations of these  
4 paragraphs necessary, Matlick is without sufficient information to form a belief regarding the  
5 truth or falsity of the allegations therein and, therefore, denies the same.  
6

7           20. Answering Paragraph 42 of the Complaint, Matlick asserts that its records  
8 reflect a single sale of AFFFs to the Flagstaff Fire Department in 2012. With respect to the  
9 remaining allegations of this paragraph, Matlick is without sufficient information to form a  
10 belief regarding the truth or falsity of the allegations therein and, therefore, denies the same.  
11  
12

13           21. Answering Paragraphs 43 through 50, inclusive, of the Complaint, Matlick is  
14 without sufficient information to form a belief regarding the truth or falsity of the allegations  
15 therein and, therefore, denies the same.  
16

17           22. Answering Paragraph 51 of the Complaint, Matlick incorporates as though set  
18 forth fully herein its responses to the allegations of Paragraphs 1 through 50.  
19

20           23. Answering Paragraph 52 of the Complaint Matlick asserts that its records  
21 reflect a single sale of AFFFs to the Flagstaff Fire Department in 2012. With respect to the  
22 remaining allegations of this paragraph, Matlick is without sufficient information to form a  
23 belief regarding the truth or falsity of the allegations therein and, therefore, denies the same.  
24

25           24. Answering Paragraph 53 of the Complaint, Matlick admits that it sells AFFFs  
26 in the ordinary course of its business and denies the remaining allegations of this paragraph.  
27  
28



1           25. Answering Paragraph 54 of the Complaint, Matlick is without sufficient  
2 information to form a belief regarding the truth or falsity of the allegations therein and,  
3 therefore, denies the same.  
4

5           26. Answering Paragraphs 55 and 56 of the Complaint, the allegations therein call  
6 for a legal conclusion, and therefore do not require an answer. However, to the extent that an  
7 answer is required, Matlick denies said allegations.  
8

9           27. Answering Paragraphs 57 and 58 of the Complaint, Matlick denies the  
10 allegations therein as to itself. With respect to the other defendants, Matlick is without  
11 sufficient information to form a belief regarding the truth or falsity of the allegations therein  
12 and, therefore, denies the same.  
13

14           28. Answering Paragraphs 59, 60 and 61 of the Complaint, Matlick is without  
15 sufficient information to form a belief regarding the truth or falsity of the allegations therein  
16 and, therefore, denies the same.  
17

18           29. Answering Paragraph 62 of the Complaint, Matlick incorporates as though set  
19 forth fully herein its responses to the allegations of Paragraphs 1 through 61.  
20

21           30. Answering Paragraphs 63, 64, 65 and 66 of the Complaint, Matlick does not  
22 believe that the allegations of these paragraphs pertain to it and thus no response would be  
23 required of it. To the extent that the Court would deem a response to the allegations of these  
24 paragraphs necessary, Matlick is without sufficient information to form a belief regarding the  
25 truth or falsity of the allegations therein and, therefore, denies the same.  
26  
27  
28

1           31. Answering Paragraph 67 of the Complaint, Matlick incorporates as though set  
2 forth fully herein its responses to the allegations of Paragraphs 1 through 66.

3  
4           32. Answering Paragraphs 68, 69 and 70 of the Complaint, Matlick denies the  
5 allegations therein as to itself. With respect to the other defendants, Matlick is without  
6 sufficient information to form a belief regarding the truth or falsity of the allegations therein  
7 and, therefore, denies the same.

8  
9           33. Answering Paragraph 71 of the Complaint, Matlick incorporates as though set  
10 forth fully herein its responses to the allegations of Paragraphs 1 through 70.

11  
12           34. Answering Paragraphs 72 through 77, inclusive, of the Complaint, Matlick  
13 does not believe that the allegations of these paragraphs pertain to it and thus no response  
14 would be required of it. To the extent that the Court would deem a response to the allegations  
15 of these paragraphs necessary, Matlick is without sufficient information to form a belief  
16 regarding the truth or falsity of the allegations therein and, therefore, denies the same.

17  
18           35. Answering Paragraph 78 of the Complaint, Matlick incorporates as though set  
19 forth fully herein its responses to the allegations of Paragraphs 1 through 77.

20  
21           36. Answering Paragraphs 79, 80, 81 and 82 of the Complaint, Matlick is without  
22 sufficient information to form a belief regarding the truth or falsity of the allegations therein  
23 and, therefore, denies the same.

24  
25                           **AFFIRMATIVE DEFENSES**

26           Matlick asserts the following affirmative defenses to Plaintiffs' claims:  
27  
28

1 A. Plaintiffs have not sufficiently identified who supplied the product that is  
2 alleged to have injured them;

3  
4 B. Plaintiffs cannot prove that Matlick either sold or distributed the product that is  
5 alleged to have injured them;

6 C. Plaintiffs' claims may be time-barred by the applicable statute of limitations;

7  
8 D. Plaintiff Wesley Forbach and/or his employer misused the product in an  
9 unforeseeable way, and that misuse of the product caused the injuries alleged;

10 E. The damages claimed by Plaintiffs were caused by other parties over which  
11 Matlick had no control or right of control;

12  
13 F. Plaintiffs lack evidence to prove that any product sold by Matlick caused their  
14 claimed injuries;

15 G. Any alleged damages sustained by Plaintiffs were not proximately caused by  
16 Matlick.

17  
18 H. As to Matlick, Plaintiffs lack evidence of an "evil hand" guided by and "evil  
19 mind" necessary for the imposition of punitive damages under Arizona law.

20  
21 I. As to punitive damages, the amount that may be awarded is limited by the  
22 United States Constitution.

23 J. Although Matlick does not presently have specific facts in support of  
24 additional affirmative defenses, it wishes to put counsel for Plaintiffs upon notice that they  
25 may assert any and all affirmative defenses which, through subsequent discovery may,  
26 indeed, be supported by the facts.  
27  
28



1 WHEREFORE, having fully answered the allegations of the Complaint, Matlick  
2 prays:

3  
4 A. that the Complaint be dismissed with prejudice, and that Plaintiffs take nothing  
5 thereby;

6 B. that it be awarded its attorneys' fees;

7  
8 C. that it be awarded its costs for this lawsuit; and

9 D. for such other and further relief as this Court deems just and proper.

10 **DATED** this 29<sup>th</sup> day of July, 2021.

11 **RESNICK & LOUIS, P.C.**

12 By: /s/ Sharon A. Briggs

13 Sharon A. Briggs, Esq.

14 8111 E. Indian Bend Road

15 Scottsdale, Arizona 85250

16 *Attorney for Defendant Matlick Enterprises,*  
17 *Inc.*

18 **ORIGINAL** of the foregoing  
19 e-filed via TurboCourt this 29<sup>th</sup>  
20 day of July, 2021, with:

21 Clerk of the Court  
22 Coconino County Superior Court

23 **COPY** mailed/e-mailed  
24 this same date to:

25 Patrick J. McGroder, III, Esq.  
26 Patrick J. McGroder, IV, Esq.  
27 BEUS GILBERT MCGRODER, PLLC  
28 701 N. 44<sup>th</sup> Street  
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*Attorneys for Plaintiff*

1 Kerry Miller, Esq.  
2 Jason W. Burge, Esq.  
3 Danielle Teutonico, Esq.  
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7 [kmiller@fishmanhaygood.com](mailto:kmiller@fishmanhaygood.com)  
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10 *Co-Counsel for Plaintiff*

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By: /s/ LaWanda Brice  
LaWanda Brice  
An Employee of Resnick & Louis, P.C.

**BEUS GILBERT MCGRODER PLLC**  
ATTORNEYS AT LAW

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Jason W. Burge, *pro hac pending*  
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*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF COCONINO**

WESLEY FORBACH and EVENSTAR A.  
FORBACH, individually, and as husband and  
wife;

Plaintiffs,

v.

CHEMGUARD, INC.; A Wisconsin corporation;  
PERIMETER SOLUTIONS LP, a Delaware  
limited partnership; and MATLICK  
ENTERPRISES, INC. an Arizona corporation,

Defendants.

No. S0300CV2021-100277

**WAIVER AND ACCEPTANCE OF  
SERVICE**

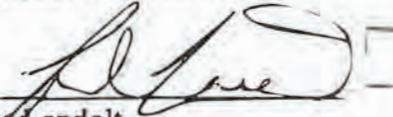
1  
2 Pursuant to Ariz. R. Civ. P. 4(f)(2), Lukas Landolt, as counsel for Defendant Chemguard,  
3 Inc., hereby accepts service of the Summons, Complaint and Certificate of Arbitration in the  
4 above-referenced matter on Chemguard, Inc.'s behalf.

5 Mr. Landolt further acknowledges that his acceptance shall have the same effect as though  
6 the documents were personally served on Defendant Chemguard, Inc.

7 This acceptance shall not constitute a waiver of any of Defendant Chemguard, Inc.'s  
8 defenses or rights to object to the substance of the Complaint.

9 DATED this 13<sup>th</sup> day of August, 2021.

10 QUARLES & BRADY, LLP

11 By:   
12 Lukas Landolt  
13 Renaissance One  
14 Two North Central Ave.  
15 Phoenix, AZ 85004  
16 Attorney for Defendant Chemguard,  
17 Inc.

18 The foregoing E-filed and COPY  
19 of the foregoing delivered "via eFiling system"  
20 this 13th day of August, 2021, to:

21 Honorable Valerie Wyant  
22 Clerk of the Superior Court  
23 200 N San Francisco  
24 Flagstaff, AZ 86001  
25





1 JUSTIN B. CARESIA (034007)  
2 BAKER & HOSTETLER LLP  
3 811 Main Street, Suite 1100  
4 Houston, TX 77002  
5 Telephone: 713.646.1358  
6 Facsimile: 713.751.1717  
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8 MATTHEW D. THURLOW  
9 (*pro hac vice application forthcoming*)  
10 RENEE M. KNUDSEN  
11 (*pro hac vice application forthcoming*)  
12 Baker & Hostetler LLP  
13 1050 Connecticut Avenue NW, Suite 1100  
14 Washington, D.C. 20036  
15 mthurlow@bakerlaw.com  
16 rknudsen@bakerlaw.com

17 *Attorneys for Defendant Perimeter Solutions LP*

18 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
19 **IN AND FOR THE COUNTY OF COCONINO**

20 WESLEY FORBACH and EVENSTAR  
21 A. FORBACH, individually, and as  
22 husband and wife,

23 Plaintiffs,

24 v.

25 CHEMGUARD, INC., a Wisconsin  
26 corporation; PERIMETER SOLUTIONS  
LP, a Delaware limited partnership; and  
MATLICK ENTERPRISES, INC.,  
an Arizona corporation,

Defendants.

Case No. S0300CV202100277

**NOTICE OF APPEARANCE  
OF JUSTIN B. CARESIA FOR  
DEFENDANT PERIMETER  
SOLUTIONS, LP**

1 NOTICE IS HEREBY GIVEN that Justin B. Caresia of the law firm Baker &  
2 Hostetler LLP enters his appearance as counsel on behalf of Defendant Perimeter  
3 Solutions, LP in this matter. All future correspondence and documents regarding this  
4 matter should be directed to the attention of:

5 Justin B. Caresia  
6 **BAKER & HOSTETLER LLP**  
7 811 Main Street, Suite 1100  
8 Houston, TX 77002  
9 Telephone: 713.646.1358  
Facsimile: 713.751.1717  
Email: jcaresia@bakerlaw.com

10 DATED: September 10, 2021

Respectfully submitted,

11 /s/ Justin B. Caresia

12 JUSTIN B. CARESIA (034007)  
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17 MATTHEW D. THURLOW\*  
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21 rknuksen@bakerlaw.com

22 \*Pro Hac Vice Application  
23 Forthcoming

24 *Attorneys for Perimeter Solutions, LP*  
25  
26

1 The foregoing was e-filed and a copy  
2 of the foregoing was delivered  
3 this 10th day of September 2021, to:

4 Patrick J. McGroder III  
5 Patrick J. McGroder IV  
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*Attorney for Matlick Enterprises, Inc.*

/s/ Justin B. Caresia

Justin B. Caresia



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8 MATTHEW D. THURLOW  
9 (*pro hac vice application forthcoming*)  
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16 rknudsen@bakerlaw.com

17 *Attorneys for Defendant Perimeter Solutions LP*

18 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

19 **IN AND FOR THE COUNTY OF COCONINO**

20 WESLEY FORBACH and EVENSTAR A.  
21 FORBACH, individually, and as husband  
22 and wife,

23 Plaintiffs,

24 v.

25 CHEMGUARD, INC., a Wisconsin  
26 corporation; PERIMETER SOLUTIONS  
LP, a Delaware limited partnership; and  
MATLICK ENTERPRISES, INC.,  
an Arizona corporation,

Defendants.

**Case No. S0300CV202100277**

**DEFENDANT PERIMETER  
SOLUTIONS LP'S ANSWER TO  
PLAINTIFFS' COMPLAINT**

1 Defendant Perimeter Solutions, LP (“Perimeter” or “Defendant”) through its  
2 undersigned counsel, responds to the Complaint from Plaintiffs Wesley Forbach and  
3 Evenstar A. Forbach (“Plaintiffs”) as follows:

4 **Introduction**

5 1. Perimeter denies knowledge or information sufficient to form a belief as to  
6 the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies  
7 the same.

8 2. Perimeter denies knowledge or information sufficient to form a belief as to  
9 the truth of the allegations contained in Paragraph 2 of the Complaint and therefore denies  
10 the same.

11 3. To the extent the allegations in Paragraph 3 are directed at Perimeter, those  
12 allegations are denied. To the extent that the allegations are directed at defendants other  
13 than Perimeter, Perimeter denies knowledge or information sufficient to form a belief as to  
14 the truth of the allegations contained in Paragraph 3 of the Complaint and therefore denies  
15 the same.

16 4. Responding to Paragraph 4, the allegations in this paragraph are vague and  
17 ambiguous as to what is meant by “PFAS,” “long periods of time,” “highly toxic,”  
18 “significant health risks,” and “exposed.” On these bases, Perimeter denies the allegations  
19 contained in Paragraph 4 of the Complaint.

20 5. To the extent the allegations in Paragraph 5 purport to characterize  
21 Perimeter’s knowledge or representations, those allegations are denied. To the extent that  
22 the allegations are directed at defendants other than Perimeter, Perimeter denies knowledge  
23 or information sufficient to form a belief as to the truth of the allegations contained in  
24 Paragraph 5 of the Complaint and therefore denies the same. To the extent the allegations  
25 in Paragraph 5 relate to Mr. Forbach, Perimeter denies knowledge or information sufficient  
26 to form a belief as to the truth of the allegations and therefore denies the same.

1           6. To the extent the allegations in Paragraph 6 assert that Perimeter’s products  
2 caused any injury, those allegations are denied. To the extent the allegations are directed  
3 at defendants other than Perimeter, Perimeter denies knowledge or information sufficient  
4 to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint  
5 and therefore denies the same. To the extent the allegations in Paragraph 6 relate to Mr.  
6 Forbach, Perimeter denies knowledge or information sufficient to form a belief as to the  
7 truth of the allegations and therefore denies the same.

8           7. The allegations in Paragraph 7 constitute a characterization of the action to  
9 which no response is required.

10                           **Parties, Jurisdiction, and Venue**

11           8. Perimeter denies knowledge or information sufficient to form a belief as to  
12 the truth of the allegations contained in Paragraph 8 of the Complaint and therefore denies  
13 the same.

14           9. Perimeter denies knowledge or information sufficient to form a belief as to  
15 the truth of the allegations contained in Paragraph 9 of the Complaint and therefore denies  
16 the same.

17           10. Perimeter admits that it is a Delaware limited partnership. Perimeter further  
18 responds that the allegations in this paragraph are vague and ambiguous as to what is meant  
19 by “throughout the United States,” “developed,” “trained users,” “produced instruction  
20 materials,” and “PFAS.” Perimeter admits that it manufactured and sold AFFF containing  
21 PFAS in the United States including in Arizona. For the remaining allegations, Perimeter  
22 denies knowledge or information sufficient to form a belief as to the truth of the allegations  
23 contained in Paragraph 10 of the Complaint and therefore denies the same.

24           11. Perimeter denies knowledge or information sufficient to form a belief as to  
25 the truth of the allegations contained in Paragraph 11 of the Complaint and therefore denies  
26 the same.



1 entered the AFFF market. Perimeter admits only that AFFF by definition includes one or  
2 more fluorosurfactants, and that fluorosurfactants are per- or polyfluoroalkyl substances.  
3 The remaining allegations in this paragraph are vague and ambiguous as to what is meant  
4 by “the primary firefighting foam” and “highly fluorinated synthetical chemical  
5 compounds.” On these bases, Perimeter denies all remaining allegations.

6 20. Responding to Paragraph 20, Perimeter has no knowledge of the use of AFFF  
7 “for decades” before it entered the AFFF market. Perimeter admits only that AFFF by  
8 definition includes one or more fluorosurfactants, and that fluorosurfactants are per- or  
9 polyfluoroalkyl substances and that the fluorosurfactants used in Perimeter’s AFFFs are  
10 manmade. With respect to the remaining allegations, Perimeter denies knowledge or  
11 information sufficient to form a belief as to the truth of the allegations contained therein  
12 and therefore denies the same.

13 21. Perimeter denies knowledge or information sufficient to form a belief as to  
14 the truth of the allegations contained in Paragraph 21 of the Complaint and therefore denies  
15 the same.

16 22. Perimeter denies knowledge or information sufficient to form a belief as the  
17 truth of the allegations contained in Paragraph 22 of the Complaint and therefore denies  
18 the same.

19 23. Perimeter denies knowledge or information sufficient to form a belief as the  
20 truth of the allegations contained in Paragraph 23 of the Complaint and therefore denies  
21 the same.

22 24. Responding to Paragraph 24, Perimeter has no knowledge of what “PFAS  
23 manufacturers” did in the 1960s, which was approximately fifty years before it entered the  
24 AFFF market. Perimeter denies knowledge or information sufficient to form a belief as to  
25 the truth of the allegations contained in Paragraph 24 of the Complaint and therefore denies  
26 the same.

1           25. Perimeter denies knowledge or information sufficient to form a belief as to  
2 the truth of the allegations contained in Paragraph 25 of the Complaint and therefore denies  
3 the same.

4           26. Perimeter denies knowledge or information sufficient to form a belief as to  
5 the truth of the allegations contained in Paragraph 26 of the Complaint and therefore denies  
6 the same.

7           27. Perimeter denies knowledge or information sufficient to form a belief as to  
8 the truth of the allegations contained in Paragraph 27 of the Complaint and therefore denies  
9 the same.

10          28. Perimeter denies knowledge or information sufficient to form a belief as to  
11 the truth of the allegations contained in Paragraph 28 of the Complaint and therefore denies  
12 the same.

13          29. Perimeter objects that the term “Short-Chain PFAS” is vague and ambiguous.  
14 Perimeter denies knowledge or information sufficient to form a belief as to the truth of the  
15 allegations contained in Paragraph 29 of the Complaint and therefore denies the same. To  
16 the extent that the allegations are directed at other defendants, Perimeter lacks knowledge  
17 or information sufficient to form a belief about the truth of the allegations and, on that  
18 basis, denies them.

19          30. Perimeter objects that the term “Short-Chain PFAS” is vague and ambiguous.  
20 Perimeter denies knowledge or information sufficient to form a belief as to the truth of the  
21 allegations contained in Paragraph 30 of the Complaint and therefore denies the same. To  
22 the extent that the allegations are directed at other defendants, Perimeter lacks knowledge  
23 or information sufficient to form a belief about the truth of the allegations and, on that  
24 basis, denies them.

25          31. Perimeter objects that the term “Short-Chain PFAS” is vague and ambiguous.  
26 Perimeter denies knowledge or information sufficient to form a belief as to the truth of the

1 allegations contained in Paragraph 31 of the Complaint and therefore denies the same. To  
2 the extent that the allegations are directed at other defendants, Perimeter lacks knowledge  
3 or information sufficient to form a belief about the truth of the allegations and, on that  
4 basis, denies them.

5 32. Perimeter denies the allegations in Paragraph 32 of the Complaint as to  
6 Perimeter. As to the other defendants, Perimeter denies knowledge or information  
7 sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the  
8 Complaint and therefore denies the same.

9 33. Perimeter denies the allegations in Paragraph 33 of the Complaint as to  
10 Perimeter. As to the other defendants, Perimeter denies knowledge or information  
11 sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the  
12 Complaint and therefore denies the same.

13 34. Perimeter denies the allegations in Paragraph 34 of the Complaint as to  
14 Perimeter. As to the other defendants, Perimeter denies knowledge or information  
15 sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the  
16 Complaint and therefore denies the same.

17 35. Perimeter denies the allegations in Paragraph 35 of the Complaint as to  
18 Perimeter. As to the other defendants, Perimeter denies knowledge or information  
19 sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of the  
20 Complaint and therefore denies the same.

21 36. Perimeter denies the allegations in Paragraph 36 of the Complaint as to  
22 Perimeter. As to the other defendants, Perimeter denies knowledge or information  
23 sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the  
24 Complaint and therefore denies the same.

25 37. Perimeter admits that it has manufactured and sold AFFF products, but  
26 Perimeter denies knowledge or information sufficient to form a belief as to the truth of the



1 remaining allegations contained in Paragraph 37 of the Complaint and therefore denies the  
2 same. To the extent that the allegations are directed at other defendants, Perimeter lacks  
3 knowledge or information sufficient to form a belief about the truth of the allegations and,  
4 on that basis, denies the same.

5 38. Perimeter denies the allegations in Paragraph 38 of the Complaint as to  
6 Perimeter. As to the other defendants, Perimeter denies knowledge or information  
7 sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the  
8 Complaint and therefore denies the same.

9 39. Perimeter denies the allegations contained in Paragraph 39 of the Complaint.

10 40. Perimeter denies knowledge or information sufficient to form a belief as to  
11 the truth of the allegations contained in Paragraph 40 of the Complaint and therefore denies  
12 the same.

13 41. Perimeter denies the allegations contained in Paragraph 41 of the Complaint.

14 42. Perimeter denies knowledge or information sufficient to form a belief as to  
15 the truth of the allegations contained in Paragraph 42 of the Complaint and therefore denies  
16 the same.

17 43. Perimeter denies knowledge or information sufficient to form a belief as to  
18 the truth of the allegations contained in Paragraph 43 of the Complaint and therefore denies  
19 the same.

20 44. Perimeter denies knowledge or information sufficient to form a belief as to  
21 the truth of the allegations contained in Paragraph 44 of the Complaint and therefore denies  
22 the same.

23 45. Perimeter denies knowledge or information sufficient to form a belief as to  
24 the truth of the allegations contained in Paragraph 45 of the Complaint and therefore denies  
25 the same.



1 remaining allegations are denied. As to the other defendants, Perimeter denies knowledge  
2 or information sufficient to form a belief as to the truth of the allegations contained in  
3 Paragraph 53 of the Complaint and therefore denies the same.

4         54. The allegations contained in Paragraph 54 of the Complaint are conclusions  
5 of law or mixed conclusions of law and fact to which no answer is required. To the extent  
6 any answer is required, Perimeter denies knowledge or information sufficient to form a  
7 belief as to the truth of the allegations contained in Paragraph 54 of the Complaint and  
8 therefore denies the same.

9         55. The allegations contained in Paragraph 55 of the Complaint are conclusions  
10 of law or mixed conclusions of law and fact to which no answer is required. To the extent  
11 any answer is required, Perimeter denies knowledge or information sufficient to form a  
12 belief as to the truth of the allegations contained in Paragraph 55 of the Complaint and  
13 therefore denies the same.

14         56. The allegations contained in Paragraph 56 of the Complaint are conclusions  
15 of law or mixed conclusions of law and fact to which no answer is required. To the extent  
16 any answer is required, Perimeter denies knowledge or information sufficient to form a  
17 belief as to the truth of the allegations contained in Paragraph 56 of the Complaint and  
18 therefore denies the same.

19         57. The allegations contained in Paragraph 57 of the Complaint are conclusions  
20 of law or mixed conclusions of law and fact to which no answer is required. To the extent  
21 any answer is required and the allegations are directed at Perimeter, those allegations are  
22 denied. As to the other defendants, Perimeter denies knowledge or information sufficient  
23 to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint  
24 and therefore denies the same.

25         58. The allegations contained in Paragraph 58 of the Complaint are conclusions  
26 of law or mixed conclusions of law and fact to which no answer is required. To the extent

1 any answer is required and the allegations are directed at Perimeter, those allegations are  
2 denied. As to the other defendants, Perimeter denies knowledge or information sufficient  
3 to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint  
4 and therefore denies the same.

5 59. Perimeter denies knowledge or information sufficient to form a belief as to  
6 the truth of the allegations contained in Paragraph 59 of the Complaint and therefore denies  
7 the same.

8 60. Perimeter denies knowledge or information sufficient to form a belief as to  
9 the truth of the allegations contained in Paragraph 60 of the Complaint and therefore denies  
10 the same.

11 61. The allegations contained in Paragraph 61 of the Complaint are conclusions  
12 of law or mixed conclusions of law and fact to which no answer is required.

## 13 **SECOND CLAIM FOR RELIEF**

### 14 **(Negligent Failure to Warn Against Manufacturing Defendants)**

15 62. Perimeter refers to and incorporates here its responses to Paragraphs 1  
16 through 61 of the Complaint as if fully set forth herein.

17 63. To the extent the allegations are directed at Perimeter, Perimeter denies the  
18 allegations in Paragraph 63 of the Complaint. As to the other defendants, Perimeter denies  
19 knowledge or information sufficient to form a belief as to the truth of the allegations  
20 contained in Paragraph 63 of the Complaint and therefore denies the same.

21 64. To the extent the allegations are directed at Perimeter, Perimeter denies the  
22 allegations in Paragraph 64 of the Complaint. As to the other defendants, Perimeter denies  
23 knowledge or information sufficient to form a belief as to the truth of the allegations  
24 contained in Paragraph 64 of the Complaint and therefore denies the same.

25 65. The allegations contained in Paragraph 65 of the Complaint are conclusions  
26 of law or mixed conclusions of law and fact to which no answer is required. To the extent

1 any answer is required and the allegations are directed at Perimeter, those allegations are  
2 denied. As to the other defendants, Perimeter denies knowledge or information sufficient  
3 to form a belief as to the truth of the allegations contained in Paragraph 65 of the Complaint  
4 and therefore denies the same.

5 66. The allegations contained in Paragraph 66 of the Complaint are conclusions  
6 of law or mixed conclusions of law and fact to which no answer is required. To the extent  
7 any answer is required and the allegations are directed at Perimeter, those allegations are  
8 denied. As to the other defendants, Perimeter denies knowledge or information sufficient  
9 to form a belief as to the truth of the allegations contained in Paragraph 66 of the Complaint  
10 and therefore denies the same.

### 11 **THIRD CLAIM FOR RELIEF**

#### 12 **(Negligent Plan or Design of Product Against All Defendants)**

13 67. Perimeter refers to and incorporates here its responses to Paragraphs 1  
14 through 66 of the Complaint as if fully set forth herein.

15 68. To the extent the allegations are directed at Perimeter, Perimeter denies the  
16 allegations in Paragraph 68 of the Complaint. As to the other defendants, Perimeter denies  
17 knowledge or information sufficient to form a belief as to the truth of the allegations  
18 contained in Paragraph 68 of the Complaint and therefore denies the same.

19 69. The allegations contained in Paragraph 69 of the Complaint are conclusions  
20 of law or mixed conclusions of law and fact to which no answer is required. To the extent  
21 the allegations are directed at Perimeter, those allegations are denied. As to the other  
22 defendants, Perimeter denies knowledge or information sufficient to form a belief as to the  
23 truth of the allegations contained in Paragraph 69 of the Complaint and therefore denies  
24 the same.

25 70. The allegations contained in Paragraph 70 of the Complaint are conclusions  
26 of law or mixed conclusions of law and fact to which no answer is required. To the extent

1 any answer is required and the allegations are directed at Perimeter, those allegations are  
2 denied. As to the other defendants, Perimeter denies knowledge or information sufficient  
3 to form a belief as to the truth of the allegations contained in Paragraph 70 of the Complaint  
4 and therefore denies the same.

5 **FOURTH CLAIM FOR RELIEF**  
6 **(Punitive Damages against Chemguard and Perimeter)**

7 71. Perimeter refers to and incorporates here its responses to Paragraphs 1  
8 through 70 of the Complaint as if fully set forth herein.

9 72. Perimeter denies the allegation that it began “manufacturing, marketing, and  
10 selling AFFFs many years ago.” Perimeter objects that the phrase “many years ago” is  
11 vague and ambiguous, and on that basis, Perimeter denies the allegations to the extent the  
12 allegations are directed at Perimeter. To the extent the allegations are directed at other  
13 defendant, Perimeter denies knowledge or information sufficient to form a belief as to the  
14 truth of the remaining allegations contained in Paragraph 72 of the Complaint and therefore  
15 denies the same.

16 73. Perimeter objects that the phrase “over the ensuing years” is vague and  
17 ambiguous. The allegations contained in Paragraph 73 of the Complaint are conclusions of  
18 law or mixed conclusions of law and fact to which no answer is required. To the extent any  
19 answer is required and the allegations are directed at Perimeter, those allegations are  
20 denied. As to the other defendant, Perimeter denies knowledge or information sufficient to  
21 form a belief as to the truth of the allegations contained in Paragraph 73 of the Complaint  
22 and therefore denies the same.

23 74. Perimeter objects that the phrases “various laws” and “various government  
24 agencies” are vague and ambiguous. The allegations contained in Paragraph 74 of the  
25 Complaint are conclusions of law or mixed conclusions of law and fact to which no answer  
26 is required. To the extent any answer is required and the allegations are directed at

1 Perimeter, those allegations are denied. As to the other defendant, Perimeter denies  
2 knowledge or information sufficient to form a belief as to the truth of the allegations  
3 contained in Paragraph 74 of the Complaint and therefore denies the same.

4 75. To the extent the allegations are directed at Perimeter, Perimeter denies the  
5 allegations in Paragraph 75 of the Complaint. As to the other defendant, Perimeter denies  
6 knowledge or information sufficient to form a belief as to the truth of the allegations  
7 contained in Paragraph 75 of the Complaint and therefore denies the same.

8 76. The allegations contained in Paragraph 76 of the Complaint are conclusions  
9 of law or mixed conclusions of law and fact to which no answer is required. To the extent  
10 any answer is required and the allegations are directed at Perimeter, Perimeter denies  
11 knowledge or information sufficient to form a belief as to the truth of the allegations  
12 contained in Paragraph 76 of the Complaint and therefore denies the same. As to the other  
13 defendant, Perimeter denies knowledge or information sufficient to form a belief as to the  
14 truth of the allegations contained in Paragraph 76 of the Complaint and therefore denies  
15 the same.

16 77. To the extent the allegations are directed at Perimeter, Perimeter denies the  
17 allegations in Paragraph 77 of the Complaint. As to the other defendant, Perimeter denies  
18 knowledge or information sufficient to form a belief as to the truth of the allegations  
19 contained in Paragraph 77 of the Complaint and therefore denies the same.

## 20 **FIFTH CLAIM FOR RELIEF**

### 21 **(Loss of Consortium)**

22 78. Perimeter refers to and incorporates here its responses to Paragraphs 1  
23 through 77 of the Complaint as if fully set forth herein.

24 79. Perimeter denies knowledge or information sufficient to form a belief as to  
25 the truth of the allegations contained in Paragraph 79 of the Complaint and therefore denies  
26 the same.



1           80. The allegations contained in Paragraph 80 of the Complaint are conclusions  
2 of law or mixed conclusions of law and fact to which no answer is required. To the extent  
3 any answer is required and the allegations are directed at Perimeter, those allegations are  
4 denied. As to the other defendants, Perimeter denies knowledge or information sufficient  
5 to form a belief as to the truth of the allegations contained in Paragraph 80 of the Complaint  
6 and therefore denies the same.

7           81. To the extent the allegations in Paragraph 81 of the Complaint are directed  
8 Perimeter, those allegations are denied. As to the other defendants, Perimeter denies  
9 knowledge or information sufficient to form a belief as to the truth of the allegations  
10 contained in Paragraph 81 of the Complaint and therefore denies the same.

11           82. The allegations contained in Paragraph 82 of the Complaint are conclusions  
12 of law or mixed conclusions of law and fact to which no answer is required. To the extent  
13 any answer is required, Perimeter denies knowledge or information sufficient to form a  
14 belief as to the truth of the allegations contained in Paragraph 82 of the Complaint and  
15 therefore denies the same.

16                           **Rule 26.2 Tier Allegation**

17           83. Responding to Plaintiffs' Rule 26.2 Tier Allegations, Plaintiffs' allegations  
18 state legal conclusions to which no response is required. To the extent any further response  
19 is required and the allegations are directed at Perimeter, those allegations are denied. To  
20 the extent the allegations are direct at other defendants, Perimeter denies knowledge or  
21 information sufficient to form a belief as to the truth of the allegations, and therefore denies  
22 the same.

1 **Prayer for Relief**

2 84. Perimeter denies that Plaintiffs are entitled to the relief set forth in the Prayer  
3 for Relief, or otherwise entitled to any relief whatsoever, and denies any fact not  
4 specifically and unconditionally admitted herein.

5 **General Denial**

6 85. Perimeter denies all allegations in the Complaint that are not expressly  
7 admitted herein. In particular, the Complaint routinely refers without differentiation to  
8 “Defendants,” “Manufacturer Defendants,” or “Distributor Defendant,” which  
9 formulations include entities other than Perimeter. Unless an allegation as to those other  
10 defendants is specifically admitted herein, Perimeter lacks knowledge or information  
11 sufficient to form a belief about the truth of any matter regarding those defendants and, on  
12 that basis, deny them. Additionally, to the extent that any headings or subheadings in the  
13 Complaint are intended as allegations, those allegations are denied.

14 86. This Answer is based on Perimeter’s investigation to date, and Perimeter  
15 reserves the right to supplement or amend this Answer during the course of the litigation  
16 as new information is learned.

17 **AFFIRMATIVE DEFENSES**

18 Perimeter asserts the following defenses without assuming the burden of proof or  
19 production as to any issue or element that otherwise rests with Plaintiffs. By listing these  
20 matters as defenses, Perimeter does not admit or acknowledge that they bear the burden of  
21 proof and/or production with respect to any of them. This statement of defenses is based  
22 on Perimeter’s investigation to date, and Perimeter reserves all rights to: (i) supplement or  
23 amend these defenses during the course of litigation as new information is learned; (ii)  
24 assert any and all other defenses now available or that may become available during the  
25 course of discovery or trial; (iii) rely on any and all defenses and presumptions set forth in  
26

1 or arising from any rule of law or statute of any state whose substantive law might control  
2 the relevant action; and/or (iv) rely upon any other defenses set forth in any Answer or  
3 disclosure of affirmative defenses of any Defendant in this action. All of the following  
4 defenses are pled in the alternative, and none constitutes an admission that Perimeter is  
5 liable to Plaintiffs, that Plaintiffs have been or will be injured or damaged in any way, or  
6 that Plaintiffs are entitled to any relief whatsoever.

7 1. The Complaint, and each cause of action or count alleged therein, fails to  
8 state facts sufficient to constitute a claim upon which relief may be granted against  
9 Defendant.

10 2. Plaintiffs' claims are barred or limited for lack of standing.

11 3. The Complaint, and each alleged claim contained therein, is barred, in whole  
12 or in part, by the applicable statutes of limitations or statute of repose. *See, e.g.,* Ariz. Rev.  
13 Stat. §§ 12-542, 12-551.

14 4. The Complaint, and each cause of action or count alleged therein, fails to join  
15 necessary parties.

16 5. The Complaint, and each alleged claim contained therein, is barred, in whole  
17 or in part, because Defendant is entitled to immunity from suit under the government  
18 contractor defense. *See Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988).

19 6. The Complaint, and each alleged claim contained therein, is barred, in whole  
20 or in part, by the doctrine of laches.

21 7. Plaintiffs' claims are not ripe and/or have been mooted.

22 8. Plaintiffs' claims are or may be barred, in whole or in part, to the extent they  
23 have failed to exhaust administrative remedies.

24 9. Plaintiffs may be barred by the doctrine of unclean hands from all forms of  
25 relief sought in the Complaint.

26

1           10. Plaintiffs may be barred by the doctrines of estoppel and/or waiver from all  
2 forms of relief sought in the Complaint.

3           11. Plaintiffs may be barred by the doctrines of res judicata and collateral  
4 estoppel from all forms of relief sought in the Complaint.

5           12. Plaintiffs' claims are barred in whole or in part under the bulk supplier,  
6 component part supplier, sophisticated-purchaser, sophisticated-user, sophisticated  
7 intermediary, and/or knowledgeable-user doctrines or other similar or related doctrines  
8 available under applicable law.

9           13. Plaintiffs' claims are barred in whole or in part by the "learned intermediary"  
10 doctrine.

11           14. Any injuries and/or damages sustained by Plaintiffs may have been caused  
12 or contributed to by the negligence or actual conduct of Plaintiffs and/or other persons,  
13 firms, corporations, or entities over whom Defendant had no control or right of control and  
14 for whom Defendant is not responsible.

15           15. Any injuries and/or damages sustained by Plaintiffs are barred by the  
16 doctrines of intervening cause and/or superseding cause.

17           16. Plaintiffs' claims are or may be barred because they did not use Defendant's  
18 products.

19           17. Plaintiffs' claims are or may be barred, in whole or in part, to the extent that  
20 Defendant's products were unforeseeably misused or altered.

21           18. Plaintiffs' claims are or may be barred, in whole or in part, because Plaintiffs  
22 or other third parties failed to follow product directions, specifications, material safety data  
23 sheets, and/or labeling requirements. Ariz. Rev. Stat. § 12-683(1).

24           19. Plaintiffs' claims are or may be barred, in whole or in part, because Plaintiffs  
25 or other third parties improperly or illegally disposed of Defendants' products.  
26

1           20. Plaintiffs' claims are or may be barred, in whole or in part, by the doctrine  
2 of election of remedies.

3           21. Plaintiffs' claims are or may be barred, in whole or in part, under applicable  
4 common law or statutory doctrines, including but not limited to avoidable consequences,  
5 voluntary exposure, assumption of risk, last clear chance, and open and obvious risk.

6           22. Plaintiffs' claims are or may be barred, in whole or in part, because  
7 Defendant used proper methods in designing, testing, and manufacturing its products in  
8 conformity with: (i) federal and state regulations, standards, specifications, and laws in  
9 effect; (ii) available knowledge and research of the scientific and industrial communities;  
10 (iii) generally recognized and prevailing industry standards; and (iv) state of the art in  
11 existence at the time the design was prepared and the products were manufactured and  
12 tested.

13           23. Plaintiffs' claims are or may be barred, in whole or in part, because any  
14 alleged levels of contamination did not exceed any applicable laws or binding regulatory  
15 standards at the relevant times.

16           24. Plaintiffs' claims are or may be barred, in whole or in part, because federal,  
17 state, and/or local authorities authorized, ratified, or were aware of and acquiesced in  
18 actions by Defendant that are the subject of Plaintiffs' claims. Defendant is not responsible  
19 or liable for any acts or omissions undertaken by or at the direction of any governmental  
20 authority or agency.

21           25. Plaintiffs' claims are or may be barred, in whole or in part, by the doctrine  
22 of primary jurisdiction.

23           26. Plaintiffs' claims are or may be barred, in whole or in part, because Perimeter  
24 neither knew, nor should have known, that any of their AFFF products posed the risks  
25 alleged by Plaintiffs by virtue of the prevailing state of the medical, scientific, technical,  
26

1 and/or industrial knowledge available to Perimeter at all times relevant to the claims or  
2 causes of action asserted by Plaintiffs.

3 27. Plaintiffs' claims are or may be barred, in whole or in part, under the doctrine  
4 of Federal Preemption, including, without limitation, express preemption, implied conflict  
5 preemption, and field preemption, pursuant to any applicable statutes, regulations,  
6 guidance documents, notices, military specification, and policy statements, enacted and/or  
7 promulgated and/or issued by Congress, federal agencies, or the executive branch,  
8 including, without limitation, to the extent Plaintiffs' claims constitute an impermissible  
9 challenge to a response or remediation action under CERCLA, 42 U.S.C. § 9613(h).

10 28. Plaintiffs' claims are or may be barred, in whole or in part, to the extent that  
11 any warranties were disclaimed and/or are limited by applicable provisions of the UCC.

12 29. Plaintiffs' damages, if any, were caused by the active, direct, and proximate  
13 negligence or actual conduct of entities or persons other than Defendant, and in the event  
14 that Defendant is found to be liable to Plaintiffs, Defendant will be entitled to  
15 indemnification, contribution, and/or apportionment.

16 30. Perimeter asserts its rights to allocation or apportionment of fault pursuant to  
17 applicable state law, as well as its rights to a proportionate reduction of any damages found  
18 against Perimeter based on the negligence or other conduct of any settling tortfeasor and/or  
19 responsible third party and/or Plaintiffs.

20 31. Plaintiffs may have failed or refused to exercise reasonable care and  
21 diligence to avoid loss and minimize damages and, therefore, may not recover for losses  
22 that could have been prevented by reasonable efforts on their part, or by expenditures which  
23 might reasonably have been made. Recovery, if any, should therefore be reduced by  
24 Plaintiffs' failure to mitigate damages, if any.

25 32. Plaintiffs' Complaint is barred, in whole or in part, by the doctrines of  
26 acquiescence, ratification, settlement, or release.

1           33.    Plaintiffs' claims may be barred by the firefighter/fireman's rule.

2           34.    Plaintiffs' claims may be barred by the public duty doctrine.

3           35.    Plaintiffs' claims may be barred by the municipal cost recovery rule or the  
4 free public services doctrine.

5           36.    Plaintiffs' claims are or may be barred, in whole or in part, because the  
6 proximate cause of the incident giving rise to the action was an alteration or modification  
7 of the product that was not reasonably foreseeable, made by a person other than the  
8 defendant and subsequent to the time the product was first sold by the defendant. Ariz.  
9 Rev. Stat. § 12-683(2).

10          37.    Plaintiffs' claims are or may be barred, in whole or in part, because the  
11 proximate cause of the incident giving rise to the action was a use or consumption of the  
12 product that was for a purpose, in a manner or in an activity other than that which was  
13 reasonably foreseeable or was contrary to any express and adequate instructions or  
14 warnings appearing on or attached to the product or on its original container or wrapping,  
15 if the intended consumer knew or with the exercise of reasonable and diligent care should  
16 have known of such instructions or warnings. Ariz. Rev. Stat. § 12-683(3).

17          38.    Plaintiffs' claims are or may be barred in whole or in part because there was  
18 not an alternative feasible design for the products at issue.

19          39.    Plaintiffs' claims are or may be barred in whole or in part due to a lack of  
20 privity between the Plaintiffs and Perimeter.

21          40.    Plaintiff's claims for punitive or exemplary damages are or may be barred or  
22 reduced, in whole or in part, by applicable law or statute, including but not limited to Ariz.  
23 Rev. Stat. § 12-689, or, in the alternative, are unconstitutional insofar as they violate the  
24 due process protections afforded by the United States Constitution, the excessive fines  
25 clause of the Eighth Amendment of the United States Constitution, the Full Faith and Credit  
26 Clause of the United States Constitution, and applicable provisions of the Constitution of



1 Arizona or that of any other state whose laws may apply. Any law, statute, or other  
2 authority purporting to permit the recovery of punitive damages in this case is  
3 unconstitutional, facially and as applied, to the extent, without limitation, that it: (1) lacks  
4 constitutionally sufficient standards to guide and restrain the jury's discretion in  
5 determining whether to award punitive damages and/or the amount, if any; (2) is void for  
6 vagueness in that it fails to provide adequate advance notice as to what conduct will result  
7 in punitive damages; (3) unconstitutionally may permit recovery of punitive damages based  
8 on harms to third parties, out-of-state conduct, conduct that complied with applicable law,  
9 or conduct that was not directed, or did not proximately cause harm to, Plaintiff; (4)  
10 unconstitutionally may permit recovery of punitive damages in an amount that is not both  
11 reasonable and proportionate to the amount of harm, if any, to Plaintiffs and to the amount  
12 of compensatory damages, if any; (5) unconstitutionally may permit jury consideration of  
13 net worth or other financial information relating to Perimeter; (6) lacks constitutionally  
14 sufficient standards to be applied by the trial court in post-verdict review of any punitive  
15 damages award; (7) lacks constitutionally sufficient standards for appellate review of  
16 punitive damages awards; (8) would unconstitutionally impose a penalty, criminal in  
17 nature, without according Perimeter the same procedural protections that are accorded to  
18 criminal defendants under the Constitutions of the United States, Arizona, and/or any other  
19 state whose laws may apply; and (9) otherwise fails to satisfy Supreme Court precedent,  
20 including, without limitation, *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); *TXO*  
21 *Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443 (1993); *BMW of North America, Inc. v.*  
22 *Gore*, 517 U.S. 559 (1996); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408  
23 (2003); and *Philip Morris USA v. Williams*, 549 U.S. 346 (2007).

**RESERVATION OF RIGHTS**

Perimeter reserves its rights to raise additional defenses as may be discovered during the course of these proceedings. Perimeter reserves the right to assert all applicable defenses under the Arizona Rules of Civil Procedure, as investigation and discovery proceeds. Perimeter adopts by reference any additional applicable defense pleaded by any other defendants not otherwise pleaded herein.

**WHEREFORE**, Perimeter respectfully requests that this Court enter judgment in their favor against Plaintiffs as follows:

- a. dismissing the Complaint in its entirety on the merits with prejudice;
- b. granting to Perimeter the costs and expenses of this action, including attorneys' fees; and
- c. awarding Perimeter such other and further relief as the Court may deem just and proper.

DATED: September 10, 2021

Respectfully submitted,

/s/ Justin B. Caresia

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCONINO

WESLEY FORBACH and EVENSTAR A.  
FORBACH, individually, and as husband  
and wife,

Plaintiffs,

vs.

CHEMGUARD, INC., a Wisconsin  
corporation; PERIMETER SOLUTIONS,  
L.P., a Delaware limited partnership; and  
MATLICK ENTERPRISES, INC., an  
Arizona corporation,

Defendants.

Case No. S0300CV202100277

**ANSWER ON BEHALF OF  
DEFENDANT CHEMGUARD, INC.**

Defendant Chemguard, Inc. ("Chemguard"), by and through its undersigned counsel,  
for its answer to the Complaint filed by Plaintiffs Wesley and Evenstar Forbach  
("Plaintiffs"), admits, denies, and alleges as follows:

**INTRODUCTION**

1. Responding to the first sentence of Paragraph 1, Chemguard lacks knowledge  
or information sufficient to form a belief about the truth of the allegations in Paragraph 1  
and, on that basis, denies them. Responding to the second sentence of Paragraph 1,

1 Chemguard admits that PFAS include, but are not limited to, PFOA and PFOS and related  
2 chemicals including those that degrade to PFOA or PFOS.

3 2. Chemguard lacks knowledge or information sufficient to form a belief about  
4 the truth of the allegations in Paragraph 2 and, on that basis, denies them.

5 3. To the extent that the allegations in Paragraph 3 are directed at Chemguard,  
6 those allegations are denied. To the allegations are directed at defendants other than  
7 Chemguard, Chemguard lacks knowledge or information sufficient to form a belief about  
8 the truth of the allegations and, on that basis, denies them.

9 4. Responding to Paragraph 4, Chemguard alleges that the allegations in this  
10 paragraph are vague and ambiguous as to what is meant by “PFAS,” “long periods of time,”  
11 “highly toxic,” “significant health risks,” and “who are exposed.” On these bases,  
12 Chemguard denies the allegations of the paragraph.

13 5. To the extent that the allegations in Paragraph 5 purport to characterize  
14 Chemguard’s knowledge or representations, those allegations are denied. To the extent that  
15 the allegations purport to characterize other parties’ knowledge, actions, or representations,  
16 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
17 allegations and, on that basis, denies them.

18 6. To the extent that the allegations in Paragraph 6 assert that Chemguard’s  
19 AFFF products caused any injury, those allegations are denied. To the extent that the  
20 allegations describe Plaintiffs’ alleged injuries, Chemguard lacks knowledge or information  
21 sufficient to form a belief about the truth of the allegations and, on that basis, denies them.

22 7. Responding to Paragraph 7, Chemguard alleges that the allegations in this  
23 paragraph purport to describe this action as set forth in the Complaint, which speaks for  
24 itself. To the extent that a further response is required, Chemguard denies that Plaintiffs  
25 are entitled to any damages or other remedies against it.

26



**PARTIES, JURISDICTION, AND VENUE**

8. Chemguard lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 8 and, on that basis, denies them.

9. Responding to Paragraph 9, Chemguard admits only that it is a Texas corporation with a headquarters in Wisconsin. All remaining allegations in this paragraph otherwise are denied.

10. Chemguard lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 10 and, on that basis, denies them.

11. Chemguard lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 11 and, on that basis, denies them.

12. Responding to Paragraph 12, Chemguard alleges that this paragraph describes a naming convention, to which no response is required. To the extent that a response is required, the allegations of this paragraph are denied.

13. Responding to Paragraph 13, Chemguard alleges that this paragraph states legal conclusions, to which no response is required. To the extent that a response is required, the allegations are denied.

14. Responding to Paragraph 14, Chemguard alleges that this paragraph states legal conclusions, to which no response is required. To the extent that a response is required, the allegations are denied.

15. Responding to Paragraph 15, Chemguard alleges that this paragraph states legal conclusions, to which no response is required. To the extent that a response is required, the allegations are denied.

**GENERAL ALLEGATIONS**

16. Responding to Paragraph 16, Chemguard admits only that AFFF is formed by combining various substances in a concentrate with water at the point of use. All remaining allegations of this paragraph are otherwise denied.

1           17.     Responding to Paragraph 17, Chemguard admits only that AFFF has superior  
2 firefighting performance as compared to water used alone on certain types of fires because  
3 of AFFF's properties, one of which is its ability to form films on liquid fuels. All remaining  
4 allegations are otherwise denied.

5           18.     Responding to Paragraph 18, Chemguard alleges that the allegations in this  
6 paragraph are vague and ambiguous as to what is meant by "in conjunction with or in place  
7 of water" and "insulate a premises." On these bases, Chemguard denies the allegations.

8           19.     Responding to Paragraph 19, Chemguard admits only that AFFF by definition  
9 includes one or more fluorosurfactants, and that fluorosurfactants are per- or  
10 polyfluoroalkyl substances. Chemguard alleges that the remaining allegations in this  
11 paragraph are vague and ambiguous as to what is meant by "the primary firefighting foam"  
12 and "highly fluorinated synthetical chemical compounds." On these bases, Chemguard  
13 denies all remaining allegations.

14           20.     Responding to Paragraph 20, Chemguard admits only that AFFF by definition  
15 includes one or more fluorosurfactants, and that fluorosurfactants are per- or  
16 polyfluoroalkyl substances; that AFFF has been used for decades; and that the  
17 fluorosurfactants used in Chemguard's AFFFs are manmade. With respect to the remaining  
18 allegations, Chemguard lacks knowledge or information sufficient to form a belief about  
19 the truth of the allegations and, on that basis, denies them.

20           21.     Chemguard lacks knowledge or information sufficient to form a belief about  
21 the truth of the allegations in Paragraph 21 and, on that basis, denies them.

22           22.     Responding to Paragraph 22, Chemguard alleges that the allegations in this  
23 paragraph are vague and ambiguous as to what is meant by "associated with." On that basis,  
24 Chemguard denies the allegations of the paragraph. Chemguard denies that AFFF causes  
25 any adverse health effect in humans.

26



1           23.     Responding to Paragraph 23, Chemguard alleges that the allegations in this  
2 paragraph are vague and ambiguous as to what is meant by “linked to.” On that basis,  
3 Chemguard denies the allegations of the paragraph. Chemguard denies that AFFF causes  
4 any adverse health effect in humans.

5           24.     Chemguard lacks knowledge or information sufficient to form a belief about  
6 the truth of the allegations in Paragraph 24 and, on that basis, denies them.

7           25.     Chemguard lacks knowledge or information sufficient to form a belief about  
8 the truth of the allegations in Paragraph 25 and, on that basis, denies them.

9           26.     Chemguard lacks knowledge or information sufficient to form a belief about  
10 the truth of the allegations in Paragraph 26 and, on that basis, denies them.

11          27.     Chemguard lacks knowledge or information sufficient to form a belief about  
12 the truth of the allegations in Paragraph 27 and, on that basis, denies them.

13          28.     Chemguard lacks knowledge or information sufficient to form a belief about  
14 the truth of the allegations in Paragraph 28 and, on that basis, denies them.

15          29.     Responding to Paragraph 29, Chemguard alleges that the allegations in this  
16 paragraph are vague and ambiguous as to what is meant by “‘new’ PFAS” and “Short-Chain  
17 PFAS.” On these bases, Chemguard denies the allegations to the extent that they pertain to  
18 its conduct. To the extent that the allegations are directed at other defendants, Chemguard  
19 lacks knowledge or information sufficient to form a belief about the truth of the allegations  
20 and, on that basis, denies them.

21          30.     Responding to Paragraph 30, Chemguard alleges that the allegations in this  
22 paragraph are vague and ambiguous as to what is meant by “Short-Chain PFAS.” On that  
23 basis, Chemguard denies the allegations to the extent that they pertain to its conduct. To  
24 the extent that the allegations are directed at other defendants, Chemguard lacks knowledge  
25 or information sufficient to form a belief about the truth of the allegations and, on that basis,  
26 denies them.

1           31.     Responding to Paragraph 31, Chemguard alleges that the allegations in this  
2 paragraph are vague and ambiguous as to what is meant by “Short-Chain PFAS.” On that  
3 basis, Chemguard denies the allegations to the extent that they pertain to its conduct. To  
4 the extent that the allegations are directed at other defendants, Chemguard lacks knowledge  
5 or information sufficient to form a belief about the truth of the allegations and, on that basis,  
6 denies them.

7           32.     To the extent the allegations in Paragraph 32 are directed at Chemguard, those  
8 allegations are denied. To the extent the allegations are directed at other defendants,  
9 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
10 allegations, and on that basis, denies them.

11           33.     To the extent the allegations in Paragraph 33 are directed at Chemguard, those  
12 allegations are denied. To the extent the allegations are directed at other defendants,  
13 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
14 allegations, and on that basis, denies them.

15           34.     To the extent the allegations in Paragraph 34 are directed at Chemguard, those  
16 allegations are denied. To the extent the allegations are directed at other defendants,  
17 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
18 allegations, and on that basis, denies them.

19           35.     To the extent the allegations in Paragraph 35 are directed at Chemguard, those  
20 allegations are denied. To the extent the allegations are directed at other defendants,  
21 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
22 allegations, and on that basis, denies them.

23           36.     To the extent the allegations in Paragraph 36 are directed at Chemguard, those  
24 allegations are denied. To the extent the allegations are directed at other defendants,  
25 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
26 allegations, and on that basis, denies them.

1           37. To the extent the allegations in Paragraph 37 are directed at Chemguard, those  
2 allegations are denied. To the extent the allegations are directed at other defendants,  
3 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
4 allegations, and on that basis, denies them.

5           38. To the extent the allegations in Paragraph 38 are directed at Chemguard, those  
6 allegations are denied. To the extent the allegations are directed at other defendants,  
7 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
8 allegations, and on that basis, denies them.

9           39. To the extent the allegations in Paragraph 39 are directed at Chemguard, those  
10 allegations are denied. To the extent the allegations are directed at other defendants,  
11 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
12 allegations, and on that basis, denies them.

13           40. Chemguard lacks knowledge or information sufficient to form a belief about  
14 the truth of the allegations in Paragraph 40 and, on that basis, denies them.

15           41. Chemguard lacks knowledge or information sufficient to form a belief about  
16 the truth of the allegations in Paragraph 41 and, on that basis, denies them.

17           42. Chemguard lacks knowledge or information sufficient to form a belief about  
18 the truth of the allegations in Paragraph 42 and, on that basis, denies them.

19           43. Chemguard lacks knowledge or information sufficient to form a belief about  
20 the truth of the allegations in Paragraph 43 and, on that basis, denies them.

21           44. Chemguard lacks knowledge or information sufficient to form a belief about  
22 the truth of the allegations in Paragraph 44 and, on that basis, denies them.

23           45. Chemguard lacks knowledge or information sufficient to form a belief about  
24 the truth of the allegations in Paragraph 45 and, on that basis, denies them.

25           46. Chemguard lacks knowledge or information sufficient to form a belief about  
26 the truth of the allegations in Paragraph 46 and, on that basis, denies them.



1 knowledge or information sufficient to form a belief about the truth of the allegations and,  
2 on that basis, denies them.

3 55. Responding to Paragraph 55, Chemguard alleges that the allegations in this  
4 paragraph state legal conclusions to which no response is required and, on that basis,  
5 Chemguard denies them. To the extent that a further response is required and the allegations  
6 are directed at Chemguard, those allegations are denied. To the extent that the allegations  
7 are directed at other defendants, Chemguard lacks knowledge or information sufficient to  
8 form a belief about the truth of the allegations and, on that basis, denies them.

9 56. To the extent the allegations in Paragraph 56 are directed at Chemguard, those  
10 allegations are denied. To the extent the allegations are directed at other defendants,  
11 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
12 allegations, and on that basis, denies them.

13 57. To the extent the allegations in Paragraph 57 are directed at Chemguard, those  
14 allegations are denied. To the extent the allegations are directed at other defendants,  
15 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
16 allegations, and on that basis, denies them.

17 58. To the extent the allegations in Paragraph 58 are directed at Chemguard, those  
18 allegations are denied. To the extent the allegations are directed at other defendants,  
19 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
20 allegations, and on that basis, denies them.

21 59. To the extent the allegations in Paragraph 59 are directed at Chemguard, those  
22 allegations are denied. To the extent the allegations are directed at other defendants,  
23 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
24 allegations, and on that basis, denies them.

25 60. Chemguard lacks knowledge or information sufficient to form a belief about  
26 the truth of the allegations of Paragraph 60, and on that basis, denies them.

1           61. To the extent the allegations in Paragraph 61 are directed at Chemguard, those  
2 allegations are denied. To the extent the allegations are directed at other defendants,  
3 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
4 allegations, and on that basis, denies them.

5                                   **SECOND CLAIM FOR RELIEF**

6                   **(Negligent Failure to Warn against Manufacturing Defendants)**

7           62. Chemguard realleges each of its answers to the preceding paragraphs and  
8 incorporates each such answer as if fully stated herein.

9           63. To the extent the allegations in Paragraph 63 are directed at Chemguard, those  
10 allegations are denied. To the extent the allegations are directed at other defendants,  
11 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
12 allegations, and on that basis, denies them.

13           64. To the extent the allegations in Paragraph 64 are directed at Chemguard, those  
14 allegations are denied. To the extent the allegations are directed at other defendants,  
15 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
16 allegations, and on that basis, denies them.

17           65. To the extent the allegations in Paragraph 65 are directed at Chemguard, those  
18 allegations are denied. To the extent the allegations are directed at other defendants,  
19 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
20 allegations, and on that basis, denies them.

21           66. To the extent the allegations in Paragraph 66 are directed at Chemguard, those  
22 allegations are denied. To the extent the allegations are directed at other defendants,  
23 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
24 allegations, and on that basis, denies them.

25

26

**THIRD CLAIM FOR RELIEF**

**(Negligent Plan or Design of Product against All Defendants)**

67. Chemguard realleges each of its answers to the preceding paragraphs and incorporates each such answer as if fully stated herein.

68. To the extent the allegations in Paragraph 68 are directed at Chemguard, those allegations are denied. To the extent the allegations are directed at other defendants, Chemguard lacks knowledge or information sufficient to form a belief about the truth of the allegations, and on that basis, denies them.

69. To the extent the allegations in Paragraph 69 are directed at Chemguard, those allegations are denied. To the extent the allegations are directed at other defendants, Chemguard lacks knowledge or information sufficient to form a belief about the truth of the allegations, and on that basis, denies them.

70. To the extent the allegations in Paragraph 70 are directed at Chemguard, those allegations are denied. To the extent the allegations are directed at other defendants, Chemguard lacks knowledge or information sufficient to form a belief about the truth of the allegations, and on that basis, denies them.

**FOURTH CLAIM FOR RELIEF**

**(Punitive Damages against Chemguard and Perimeter Solutions)**

71. Chemguard realleges each of its answers to the preceding paragraphs and incorporates each such answer as if fully stated herein.

72. Responding to Paragraph 72, Chemguard alleges that the allegations are vague and ambiguous as to what is meant by “many years ago” and “manufacturing, marketing, and selling,” and on those bases, Chemguard denies the allegations to the extent that they pertain to it. To the extent that the allegations are directed at other defendants, Chemguard lacks knowledge or information sufficient to form a belief about the truth of the allegations and, on that basis, denies them.



1           73. To the extent the allegations in Paragraph 73 are directed at Chemguard, those  
2 allegations are denied. To the extent the allegations are directed at other defendants,  
3 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
4 allegations, and on that basis, denies them.

5           74. To the extent the allegations in Paragraph 74 are directed at Chemguard, those  
6 allegations are denied. To the extent the allegations are directed at other defendants,  
7 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
8 allegations, and on that basis, denies them.

9           75. To the extent the allegations in Paragraph 75 are directed at Chemguard, those  
10 allegations are denied. To the extent the allegations are directed at other defendants,  
11 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
12 allegations, and on that basis, denies them.

13           76. To the extent the allegations in Paragraph 76 are directed at Chemguard, those  
14 allegations are denied. To the extent the allegations are directed at other defendants,  
15 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
16 allegations, and on that basis, denies them.

17           77. To the extent the allegations in Paragraph 77 are directed at Chemguard, those  
18 allegations are denied. To the extent the allegations are directed at other defendants,  
19 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
20 allegations, and on that basis, denies them.

21                           **FIFTH CLAIM FOR RELIEF**

22                                   **(Loss of Consortium)**

23           78. Chemguard realleges each of its answers to the preceding paragraphs and  
24 incorporates each such answer as if fully stated herein.

25           79. Chemguard lacks knowledge or information sufficient to form a belief about  
26 the truth of the allegations of Paragraph 79, and on that basis, denies them.

1           80. To the extent the allegations in Paragraph 80 are directed at Chemguard, those  
2 allegations are denied. To the extent the allegations are directed at other defendants,  
3 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
4 allegations, and on that basis, denies them.

5           81. To the extent the allegations in Paragraph 81 are directed at Chemguard, those  
6 allegations are denied. To the extent the allegations are directed at other defendants,  
7 Chemguard lacks knowledge or information sufficient to form a belief about the truth of the  
8 allegations, and on that basis, denies them.

9           82. Chemguard lacks knowledge or information sufficient to form a belief about  
10 the truth of the allegations of Paragraph 82, and on that basis, denies them.

#### 11                           **RULE 26.2 TIER ALLEGATIONS**

12           83. Responding to Plaintiffs' Rule 26.2 Tier Allegations, Chemguard alleges that  
13 these allegations state legal conclusions to which no response is required and, on that basis,  
14 Chemguard denies them. To the extent that a further response is required and the allegations  
15 are directed at Chemguard, those allegations are denied. To the extent that the allegations  
16 are directed at other defendants, Chemguard lacks knowledge or information sufficient to  
17 form a belief about the truth of the allegations and, on that basis, denies them.

#### 18                           **PRAYER FOR RELIEF**

19           84. Chemguard denies the allegations in the final paragraphs of the Complaint  
20 wherein Plaintiffs make their prayer for relief (including all sub-paragraphs) and further  
21 denies that Plaintiffs are entitled to any damages or remedies against them.

#### 22                           **GENERAL DENIAL**

23           85. Chemguard denies all allegations in the Complaint that are not expressly  
24 admitted herein. In particular, the Complaint routinely refers without differentiation to  
25 "Defendants" or "Manufacturer Defendants," which formulations include entities other than  
26 Chemguard. Unless an allegation as to those other defendants is specifically admitted

1 herein, Chemguard lacks knowledge or information sufficient to form a belief about the  
2 truth of any matter regarding those defendants and, on that basis, denies them. Additionally,  
3 to the extent that any headings or subheadings in the Complaint are intended as allegations,  
4 those allegations are denied.

5 86. This Answer is based Chemguard's investigation to date, and Chemguard  
6 reserves the right to supplement or amend this Answer during the course of the litigation as  
7 new information is learned.

### 8 **AFFIRMATIVE DEFENSES**

9 Chemguard asserts the following defenses without assuming the burden of proof or  
10 production as to any issue or element that otherwise rests with Plaintiffs. By listing these  
11 matters as defenses, Chemguard does not admit or acknowledge that it bears the burden of  
12 proof and/or production with respect to any of them. This statement of defenses is based  
13 on Chemguard's investigation to date, and Chemguard reserves all rights to (i) supplement  
14 or amend these defenses during the course of litigation as new information is learned; (ii)  
15 to assert any and all other defenses now available or that may become available during the  
16 course of discovery or trial; (iii) to rely on any and all defenses and presumptions set forth  
17 in or arising from any rule of law or statute of any state whose substantive law might  
18 control the relevant action; and/or (iv) to rely upon any other defenses set forth in any  
19 Answer or disclosure of affirmative defenses of any Defendant in this action. All of the  
20 following defenses are pled in the alternative, and none constitutes an admission that  
21 Chemguard is liable to Plaintiffs, that Plaintiffs have been or will be injured or damaged  
22 in any way, or that Plaintiffs are entitled to any relief whatsoever.

23 1. The Complaint, and each cause of action or count alleged therein, fails to state  
24 facts sufficient to constitute a claim upon which relief may be granted against Chemguard.

25 2. This Court lacks personal jurisdiction over Chemguard, and the Complaint  
26 should therefore be dismissed.

1           3.     Plaintiffs' claims are barred or limited for lack of standing.

2           4.     Plaintiffs' claims are or may be barred, in whole or in part, by the applicable  
3 statutes of limitations. *See, e.g.,* Ariz. Rev. Stat. §§ 12-542, 12-551.

4           5.     Plaintiffs' claims are or may be barred, in whole or in part, by applicable  
5 statutes of repose.

6           6.     Plaintiffs' claims are or may be barred, in whole or in part, by the doctrine of  
7 laches.

8           7.     Plaintiffs' claims are or may be barred, in whole or in part, because  
9 Chemguard is entitled to immunity from suit under the government contractor defense. *See*  
10 *Boyle v. United Techs. Corp.*, 487 U.S. 500 (1988).

11          8.     The Complaint, and each cause of action or count alleged therein, fails to join  
12 necessary parties.

13          9.     Plaintiffs' claims are or may be barred, in whole or in part, because Plaintiffs  
14 are not the real parties in interest or lack capacity to bring their claims.

15          10.    Plaintiffs' claims are or may not be ripe and/or have been mooted.

16          11.    Plaintiffs' claims are or may be barred, in whole or in part, to the extent that  
17 they have failed to exhaust administrative remedies.

18          12.    Plaintiffs are or may be barred by the doctrine of unclean hands from all forms  
19 of relief sought in the Complaint.

20          13.    Plaintiffs are or may be barred by the doctrines of estoppel and/or waiver from  
21 all forms of relief sought in the Complaint.

22          14.    Plaintiffs are or may be barred by the doctrines of res judicata and collateral  
23 estoppel from all forms of relief sought in the Complaint.

24          15.    Plaintiffs' claims are or may be barred in whole or in part under the bulk  
25 supplier, component part supplier, sophisticated-purchaser, sophisticated-user,  
26 sophisticated intermediary, and/or knowledgeable-user doctrines or other similar or related

1 doctrines available under applicable law.

2 16. Any injuries and/or damages sustained by Plaintiffs are barred by the  
3 doctrines of intervening cause and/or superseding cause.

4 17. Plaintiffs' claims are or may be barred, in whole or in part, because of product  
5 misuse.

6 18. Plaintiffs' claims are or may be barred, in whole or in part, because the plans  
7 or designs for the products at issue or the methods and techniques of manufacturing,  
8 inspecting, testing and labeling the products conformed with the state of the art at the time  
9 the product was first sold by the defendant. Ariz. Rev. Stat. § 12-683(1).

10 19. Plaintiffs' claims are or may be barred, in whole or in part, because the  
11 proximate cause of the incident giving rise to the action was an alteration or modification  
12 of the product that was not reasonably foreseeable, made by a person other than the  
13 defendant and subsequent to the time the product was first sold by the defendant. Ariz.  
14 Rev. Stat. § 12-683(2).

15 20. Plaintiffs' claims are or may be barred, in whole or in part, because the  
16 proximate cause of the incident giving rise to the action was a use or consumption of the  
17 product that was for a purpose, in a manner or in an activity other than that which was  
18 reasonably foreseeable or was contrary to any express and adequate instructions or warnings  
19 appearing on or attached to the product or on its original container or wrapping, if the  
20 intended consumer knew or with the exercise of reasonable and diligent care should have  
21 known of such instructions or warnings. Ariz. Rev. Stat. § 12-683(3).

22 21. Plaintiffs' claims are or may be barred, in whole or in part, by the doctrine of  
23 election of remedies.

24 22. Plaintiffs' claims are subject to all defenses that could be asserted if Plaintiffs'  
25 claims were properly made by individuals on whose behalf or for whose alleged damages  
26 Plaintiffs seek to recover.

1           23. Plaintiffs' claims are or may be barred, in whole or in part, because  
2 Chemguard neither knew, nor should have known, that any of its AFFF products posed the  
3 risks alleged by Plaintiffs by virtue of the prevailing state of the medical, scientific,  
4 technical, and/or industrial knowledge available to Chemguard at all times relevant to the  
5 claims or causes of action asserted by Plaintiffs.

6           24. Plaintiffs' claims are or may be barred, in whole or in part, because  
7 Chemguard used proper methods in designing, testing, and manufacturing their products in  
8 conformity with (i) federal and state regulations, standards, specifications, and laws in  
9 effect; (ii) available knowledge and research of the scientific and industrial communities;  
10 (iii) generally recognized and prevailing industry standards; and (iv) the state of the art in  
11 existence at the time the design was prepared and the products were manufactured and  
12 tested.

13           25. Plaintiffs' claims are or may be barred, in whole or in part, because federal,  
14 state, and/or local authorities authorized, ratified, or were aware of and acquiesced in  
15 actions by Chemguard that are the subject of Plaintiff's claims. Chemguard is not  
16 responsible or liable for any acts or omissions undertaken by or at the direction of any  
17 governmental authority or agency.

18           26. Plaintiffs' claims are or may be barred, in whole or in part, by the doctrine of  
19 primary jurisdiction.

20           27. Plaintiffs' claims are or may be barred, in whole or in part, under the doctrine  
21 of federal preemption, including, without limitation, express preemption, implied conflict  
22 preemption, and field preemption, pursuant to any applicable statutes, regulations, guidance  
23 documents, notices, military specification, and policy statements, enacted and/or  
24 promulgated and/or issued by Congress, federal agencies, or the executive branch,  
25 including, without limitation, to the extent that Plaintiff's claims constitute an  
26 impermissible challenge to a response or remediation action under CERCLA, 42 U.S.C. §

1 9613(h).

2 28. Plaintiffs' claims are or may be barred, in whole or in part, because of consent,  
3 public necessity, private necessity and/or privilege.

4 29. Discovery may establish that Plaintiffs engaged in fraudulent and/or negligent  
5 acts or omissions, and thereby are at fault for its own alleged injuries and barred from  
6 recovery based on the doctrine of in pari delicto, the defense of unclean hands or estoppel,  
7 or like defense.

8 30. Discovery may establish that Plaintiffs engaged in fraudulent or otherwise  
9 wrongful conduct and/or negligent acts or omissions, and thereby proximately caused and  
10 contributed to their own alleged injuries. In addition, Chemguard invokes any such other  
11 statutory or common law principles of contributory or comparative negligence as may be  
12 deemed to apply, that permit allocation or apportionment of fault pursuant to applicable  
13 state law, and/or that permit a proportional reduction of any damages found against  
14 Chemguard based on the tortious conduct of any settling tortfeasor and/or responsible third  
15 party, or Plaintiffs.

16 31. Chemguard cannot be held jointly or severally liable. In addition, Chemguard  
17 invokes any such other statutory or common law principles that may prohibit or limit the  
18 application of joint liability, permit allocation or apportionment of fault pursuant to  
19 applicable state law, permit a proportional reduction of any damages found against  
20 Chemguard based on the tortious conduct of any settling tortfeasor and/or responsible third  
21 party, or Plaintiffs.

22 32. Plaintiffs' damages, if any, were caused by the active, direct, and proximate  
23 negligence or actual conduct of entities or persons other than Chemguard, and in the event  
24 that Chemguard is found to be liable to Plaintiffs, Chemguard will be entitled to  
25 indemnification, contribution, and/or apportionment. See Ariz. Rev. Stat. § 12-684.

26



1           33. By operation of the “one satisfaction” rule and/or by application of the  
2 affirmative defense of payment (or like defense), the damages asserted by Plaintiffs must  
3 be reduced by any amounts recovered by them, including without limitation, amounts  
4 received to pay for remediation efforts, settlement with third-parties (whether the result of  
5 formal proceedings or not), or other avenues of recovery.

6           34. Plaintiffs’ claims are or may be barred, in whole or in part, by the doctrines  
7 of acquiescence, accord and satisfaction, ratification, settlement, or release.

8           35. Plaintiffs’ claims are or may be barred, in whole or in part, because Plaintiffs  
9 may have failed or refused to exercise reasonable care and diligence to avoid loss and  
10 minimize damages and, therefore, may not recover for losses that could have been prevented  
11 by reasonable efforts on their part, or by expenditures which might reasonably have been  
12 made. Recovery, if any, should therefore be reduced by Plaintiffs’ failure to mitigate  
13 damages, if any.

14           36. Plaintiffs’ claims are or may be barred or limited, in whole or in part, by the  
15 economic loss rule.

16           37. Plaintiffs’ claims are or may be barred, in whole or in part, under applicable  
17 common law or statutory doctrines, including but not limited to avoidable consequences,  
18 voluntary exposure, assumption of risk, open and obvious risk, and matters of common  
19 knowledge.

20           38. Plaintiffs’ claims against Chemguard are or may be barred, in whole or in  
21 part, because a successor corporation is not liable for the former’s corporation’s debts and  
22 liabilities.

23           39. Plaintiffs’ claims are or may be barred, in whole or in part, because the  
24 foreseeable risks associated with the design or formulation of the relevant product(s) did  
25 not exceed the benefits associated with that design or formulation.  
26

1           40. Plaintiffs' claims are or may be barred, in whole or in part, because the  
2 products at issue perform as safely as an ordinary consumer would expect when used in a  
3 reasonably foreseeable manner.

4           41. Plaintiff's claims for punitive or exemplary damages are or may be barred or  
5 reduced, in whole or in part, by applicable law or statute, including but not limited to Ariz.  
6 Rev. Stat. § 12-689, or, in the alternative, are unconstitutional insofar as they violate the  
7 due process protections afforded by the United States Constitution, the excessive fines  
8 clause of the Eighth Amendment of the United States Constitution, the Full Faith and Credit  
9 Clause of the United States Constitution, and applicable provisions of the Constitution of  
10 Arizona or that of any other state whose laws may apply. Any law, statute, or other authority  
11 purporting to permit the recovery of punitive damages in this case is unconstitutional,  
12 facially and as applied, to the extent, without limitation, that it (1) lacks constitutionally  
13 sufficient standards to guide and restrain the jury's discretion in determining whether to  
14 award punitive damages and/or the amount, if any; (2) is void for vagueness in that it fails  
15 to provide adequate advance notice as to what conduct will result in punitive damages; (3)  
16 unconstitutionally may permit recovery of punitive damages based on harms to third parties,  
17 out-of-state conduct, conduct that complied with applicable law, or conduct that was not  
18 directed, or did not proximately cause harm to, Plaintiff; (4) unconstitutionally may permit  
19 recovery of punitive damages in an amount that is not both reasonable and proportionate to  
20 the amount of harm, if any, to Plaintiffs and to the amount of compensatory damages, if  
21 any; (5) unconstitutionally may permit jury consideration of net worth or other financial  
22 information relating to Chemguard; (6) lacks constitutionally sufficient standards to be  
23 applied by the trial court in post-verdict review of any punitive damages award; (7) lacks  
24 constitutionally sufficient standards for appellate review of punitive damages awards; (8)  
25 would unconstitutionally impose a penalty, criminal in nature, without according  
26 Chemguard the same procedural protections that are accorded to criminal defendants under

1 the Constitutions of the United States, Arizona, and/or any other state whose laws may  
2 apply; and (9) otherwise fails to satisfy Supreme Court precedent, including, without  
3 limitation, *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991); *TXO Production*  
4 *Corp. v. Alliance Resources Corp.*, 509 U.S. 443 (1993); *BMW of North America, Inc. v.*  
5 *Gore*, 517 U.S. 559 (1996); *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538  
6 U.S. 408 (2003); and *Philip Morris USA v. Williams*, 549 U.S. 346 (2007).

7 42. Chemguard reserves the right to assert all applicable defenses under Arizona  
8 Rules of Civil Procedure, as investigation and discovery proceeds.

9 43. Chemguard adopts by reference any additional applicable defense pleaded by  
10 any other defendants not otherwise pleaded herein.

11 **PRAYER FOR RELIEF**

12 Chemguard respectfully prays that the Court dismiss the Complaint with prejudice,  
13 and award Chemguard its costs and attorneys' fees, and such other relief as this Court finds  
14 just and equitable.

15 DATED this 11th day of October, 2021.

16 QUARLES & BRADY LLP  
17 Two North Central Avenue  
Phoenix, AZ 85004-2391

18 By /s/ Lukas M. Landolt

19 Eric B. Johnson  
20 Lukas M. Landolt

21 *Attorneys for Defendant Chemguard, Inc.*  
22  
23  
24

25 ////

26 ////

1 **ORIGINAL** of the foregoing e-filed  
2 and a **COPY** e-mailed this  
3 11th day of October, 2021 to:

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[rknudsen@bakerlaw.com](mailto:rknudsen@bakerlaw.com)

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25 *Counsel for Matlick Enterprises, Inc.*

26 /s/ Maria Marotta

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8 Amy Levine Heiserman (#032486)  
9 [Amy.Heiserman@quarles.com](mailto:Amy.Heiserman@quarles.com)

10 *Attorneys for Defendant Chemguard, Inc.*

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
12 IN AND FOR THE COUNTY OF COCONINO

13 Wesley Forbach and Evenstar A. Forbach,  
14 individually, and as husband and wife,

15 Plaintiffs,

16 vs.

17 Chemguard, Inc., a Wisconsin corporation;  
18 Perimeter Solutions LP., a Delaware  
19 limited partnership; and Matlick  
20 Enterprises, Inc., an Arizona corporation,

21 Defendants.

Case No. CV2020-017108

**NOTICE OF SUBSTITUTION OF  
COUNSEL WITHIN FIRM**

22 Defendant Chemguard, Inc. ("Defendant") hereby gives notice that Amy Levine  
23 Heiserman, an attorney with Quarles & Brady LLP, is substituted in as counsel of record  
24 for Lukas M. Landolt. Mr. Landolt is no longer affiliated with the firm and should be  
25 removed from all future service in this matter.  
26

////

////

1 RESPECTFULLY SUBMITTED this 5th day of November, 2021.

2 QUARLES & BRADY LLP  
3 Two North Central Avenue  
Phoenix, AZ 85004-2391

4 By /s/ Eric B. Johnson

5 Eric B. Johnson  
6 Amy Levine Heiserman

7 *Attorney for Defendant Chemguard, Inc.*

8 **ORIGINAL** of the foregoing e-filed  
9 and a **COPY** e-mailed this  
5th day of November, 2021 to:

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7 Sharon A. Briggs  
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10 Scottsdale, Arizona 85250  
11 [sbriggs@rlattorneys.com](mailto:sbriggs@rlattorneys.com)  
12 *Counsel for Matlick Enterprises, Inc.*

12 /s/ Maria Marotta



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Phoenix 602-297-0676, Tucson 520-628-2824, Flagstaff 928-225-7737  
Client Matter 28120.0063  
Account # 0443  
Invoice # \_\_\_\_\_  
Liddy # 386584-1

21 NOV 2021 10:30  


**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCONINO**

WESLEY FORBACH AND EVENSTAR A. FORBACH,

**Plaintiff(s) / Petitioner(s),**

vs

CHEMGUARD, INC.; et. al.,

**CERTIFICATE OF SERVICE  
BY PRIVATE PROCESS SERVER**  
Case No. S0300CV202100277

**Defendant(s) / Respondent(s).**

**ENTITY/PERSON TO BE SERVED:** Flagstaff Fire Dept.

**PLACE OF SERVICE:** 211 W. Aspen Ave., Flagstaff, AZ 86001

**DATE OF SERVICE:** On the 24th day of November, 2021 at 10:56 AM County Coconino

☐ **PERSONAL SERVICE** ☒ Left a copy with a person authorized to accept service. ☐ At this usual place of abode, I left a copy with a person of suitable age and discretion residing therein.

**Name of Person Served and Relationship/Title** Served by leaving the documents with Stacy Saltzberg, Flagstaff City Clerk,  
authorized to accept/receive service.

on 11/22/2021 we received the following documents for service:

Subpoena Duces Tecum; Cover Letter; Declaration of the Custodian of Records; Authorization to Disclose Medical Information;  
Authorization to Disclose Employment Information

\*\*\*Date and time of production: 12/20/2021 at 9:00AM\*\*\*

**Received from RESNICK & LOUIS, P.C., ( ELLEN S. LEVY #020275 )**

**PROCESS SERVER:** Eugene Bernhard

The undersigned states: That I am a private process server in the county of Coconino and am an Officer of the Court.

**SIGNATURE OF PROCESS SERVER:**



Date: 11/24/2021

**Tax ID# 90-0533870**

I declare under penalty of perjury that the foregoing is true  
and correct and was executed on this date.

JUSTIN B. CARESIA (034007)  
BAKER & HOSTETLER LLP  
811 Main Street, Suite 1100  
Houston, TX 77002  
Telephone: 713.646.1358  
Facsimile: 713.751.1717  
jcaresia@bakerlaw.com

MATTHEW D. THURLOW  
(*pro hac vice application pending*)  
RENEE M. KNUDSEN  
(*pro hac vice application pending*)  
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rknudsen@bakerlaw.com

*Attorneys for Defendant Perimeter Solutions LP*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF COCONINO**

WESLEY FORBACH and EVENSTAR A.  
FORBACH, individually, and as husband  
and wife,

Plaintiffs,

v.

CHEMGUARD, INC., a Wisconsin  
corporation; PERIMETER SOLUTIONS  
LP, a Delaware limited partnership; and  
MATLICK ENTERPRISES, INC.,  
an Arizona corporation,

Defendants.

**Case No. S0300CV202100277**

**[PROPOSED] ORDER RE: MOTION  
TO ASSOCIATE MATTHEW D.  
THURLOW PRO HAC VICE**

Based on the Motion to Associate Counsel Pro Hac Vice of Justin B. Caresia and the consent of Justin B. Caresia to appear as local counsel, it is hereby ordered that Matthew D. Thurlow be admitted *pro hac vice* as counsel for Defendant Perimeter Solutions, LP in this matter.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2021.

---





Attn: Pro Hac Vice Dept  
P.O. Box 842699  
Los Angeles, CA 90084-2699  
Phone: 602-340-7239

For Official Use Only

App# 1612961  
Bar Number# P20977

OK #499991 \$505.00

Overnight or Hand Delivery:  
4201 N. 24th St., Ste 100  
Phoenix, AZ 85016-6266

### Application for Appearance Pro Hac Vice

#### PART I: Applicant Information

Name of Applicant: Matthew D. Thurlow  
Firm/Company Name: Baker & Hostetler LLP  
Office Address: 1050 Connecticut Avenue, NW, Suite 1100, Washington, DC, 20036  
Telephone: (202) 861-1671 Fax: (202) 861-1783 Email Address: mthurlow@bakerlaw.com  
Residence Address: 1600 N Edgewood St, Arlington, VA 22201  
Title of cause or case where applicant seeks to appear: Forbach, et al. v. Chemguard, et al.  
Docket Number: S0300CV202100277  
Court, Board, or Administrative Agency: Coconino County Superior Court  
Party on whose behalf applicant seeks to appear: Perimeter Solutions, LP

Pursuant to Arizona Supreme Court Rule 39(a)(2), the applicant shall complete the information below:

Courts to Which Applicant Has Been Admitted: <small>(Attach additional pages if necessary)</small>	Date of Admission:	Bar Number:
<u>California</u>	<u>6/9/2008</u>	<u>243470</u>
<u>District of Columbia</u>	<u>6/4/2012</u>	<u>1008014</u>
_____	_____	_____
_____	_____	_____

☒ Applicant is a member in good standing in such courts.

☒ Applicant is not currently disbarred or suspended in any court.

Applicant ☐ is / ☒ is not (select one) currently subject to any pending disciplinary proceeding or investigation by any court, agency or organization authorized to discipline attorneys at law. If yes, specify the jurisdiction, nature of investigation and contact information of the disciplinary authority investigating on an additional page.

In the preceding three (3) years, applicant has filed applications to appear as counsel under Ariz. R. Sup. Ct., Rule 39(a) in the following:

Title of Matter:	Docket #:	Court or Agency:	App Granted? (Y/N)
<u>Young v. Chemguard et al</u>	<u>CV2020-17108</u>	<u>Maricopa Cnty. Sup. Ct.</u>	<u>Yes</u>
_____	_____	_____	_____
_____	_____	_____	_____

This case or cause ☐ is / ☒ is not (select one) a related or consolidated matter for which applicant has previously applied to appear pro hac vice in Arizona. If this matter is a related or consolidated with any previous application, Applicant certifies that he/she will review and comply with appropriate rules of procedure as required in the underlying cause.  
If applicable, please provide related or consolidated matter application or docket# \_\_\_\_\_



Page 2

**PART II: Local Counsel Information**Name of Arizona Local Counsel: Justin B. CaresiaState Bar of Arizona Number: 034007Address: 811 Main Street, Suite 1100, Houston, TX, 77002Telephone: (713) 646-1358 Fax: (713) 751-1717 Email Address: jcaresia@bakerlaw.com☒ Local Counsel is a member in good standing.☒ Local Counsel associating with a nonresident attorney in a particular cause shall accept joint responsibility with the nonresident attorney to the client, to opposing parties and counsel, and to court, board, or administrative agency in that particular cause.**PART III: Parties and Certification**

Name(s) of each party in this cause and name and address of all counsel of record:

Party:	Counsel of Record:	Address:
<u>Wesley Forbach; Evenstar A. Forbach</u>	<u>Patrick J. McGroder III</u>	<u>701 North 44th Street, Phoenix, AZ 85008</u>
<u>Chemguard, Inc.</u>	<u>Amy Levine Heiserman</u>	<u>Two North Central Ave. Phoenix, AZ 85004</u>
<u>Matlick Enterprises, Inc.</u>	<u>Ellen Levy</u>	<u>8111 E. Indian Bend Rd. Scottsdale, AZ 85250</u>
<u>Perimeter Solutions, LP</u>	<u>Justin B. Caresia</u>	<u>811 Main Street, Ste. 1100, Houston, TX, 77002</u>

☒ Applicant is including with this application a nonrefundable application fee, payable to the State Bar of Arizona, in the amount of \$505.00. Fifteen percent of the non-refundable application fee paid pursuant to this section shall be deposited into a civil legal services fund to be distributed by the Arizona Foundation for Legal Services and Education entirely to approved legal services organizations, as that term is defined in subparagraph (2)(c) of this rule.

☒ Applicant is furnishing a certificate from the state bar or from the clerk of the highest admitting court of each state, territory, or insular possession of the United States in which the nonresident attorney has been admitted to practice law certifying the nonresident attorney's date of admission to such jurisdiction and the current status of the nonresident attorney's membership or eligibility to practice therein. The certificate furnished shall be no more than forty-five (45) days old.

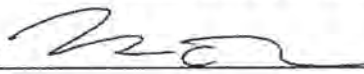
Applicant certifies the following:

1. Applicant shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the law of this state governing the conduct of attorneys to the same extent as an active member of the State Bar of Arizona, as provided in Ariz. R. Sup. Ct. Rule 46(b).
2. Applicant will review and comply with appropriate rules of procedure as required in the underlying cause.
3. Applicant understands and shall comply with the standards of conduct required of members of the State Bar of Arizona.

**Verification**

STATE OF \_\_\_\_\_ )  
 County of \_\_\_\_\_ ) ss.

I, Matthew D. Thurlow, swear that all statements in the application are true, correct and complete to the best of my knowledge and belief.

Dated: 10/7/2021Applicant's Signature: 

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

Name of Applicant \_\_\_\_\_

Notary Public \_\_\_\_\_

## COVID-19 Temporary Verification

This Form is intended to be a required supplement to State Bar of Arizona applications and certifications during the period of pandemic health advisories and the related emergency orders of the federal government, the Governor of Arizona, and the Supreme Court of Arizona. This unsworn declaration, under penalty of perjury, is to be submitted in lieu of a notarized verification pursuant to Arizona Rules of Civil Procedure, Rule 80(c).

State of Virginia )  
County of Arlington ) ss.

I, Matthew D. Thurlow, a member of the State Bar of DC and CA, submit this unsworn verification in support of my:

- ☐ Resignation of Membership
- ☒ Application for Appearance *Pro Hac Vice*
- ☐ Application for In-House Counsel certification
- ☐ Application for transfer to Inactive / Retired status
- ☐ Application for Reinstatement after Summary Suspension by the Board of Governors

I hereby declare and verify, under the penalty of perjury, that the foregoing information and that on the applicable application form is true and correct.

Dated: 10/7/2021

  
Attorney signature





On behalf of JULIO A. CASTILLO, Clerk of the District of Columbia Court of Appeals,  
the District of Columbia Bar does hereby certify that

*Matthew David Thurlow*

was duly qualified and admitted on June 4, 2012 as an attorney and counselor entitled to  
practice before this Court; and is, on the date indicated below, a(n)  
ACTIVE member in good standing of this Bar.

**In Testimony Whereof,  
I have hereunto subscribed my  
name and affixed the seal of this  
Court at the City of  
Washington, D.C., on  
September 24, 2021.**

*Julio A. Castillo*

**JULIO A. CASTILLO  
Clerk of the Court**

Issued By:

*[Signature]*  
District of Columbia Bar Membership

For questions or concerns, please contact the D.C. Bar Membership Office at 202-626-3475 or email  
[memberservices@dcbar.org](mailto:memberservices@dcbar.org).





The State Bar  
*of California*

180 Howard Street, San Francisco, CA 94105

OFFICE OF ATTORNEY REGULATION &  
CONSUMER RESOURCES

AttorneyRegulation@calbar.ca.gov  
888-800-3400

## CERTIFICATE OF STANDING

September 27, 2021

### TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, MATTHEW DAVID THURLOW, #243470 was admitted to the practice of law in this state by the Supreme Court of California on June 9, 2006 and has been since that date, and is at date hereof, an ACTIVE licensee of the State Bar of California; and that no recommendation for discipline for professional or other misconduct has ever been made by the Board of Trustees or a Disciplinary Board to the Supreme Court of the State of California.

THE STATE BAR OF CALIFORNIA

A handwritten signature in blue ink, appearing to read "DV", is placed above the name of the signatory.

Denise Velasco  
Custodian of Records

United States District Court  
Northern District of California

CERTIFICATE OF GOOD STANDING

It is hereby certified that

Matthew David Thurlow

Bar Number 243470

was duly admitted to practice in this Court on January 24, 2007,  
and is in good standing as a member of the bar of this Court.



Signed on September 27, 2021 by

*Susan Y. Soong*

Susan Y. Soong, Clerk of Court



## Coconino County Superior Court

Forbach, et al.,  
Plaintiff

v.

Chemguard, et al,  
Defendant.

CASE # S0300CV202100277

SBA App #1012961

**NOTICE OF RECEIPT OF COMPLETE  
APPLICATION**

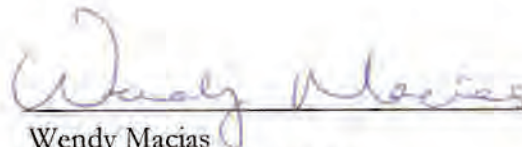
NOTICE IS HEREBY given by THE STATE BAR OF ARIZONA that it has received the verified application and fee from Matthew David Thurlow.

In addition to this application, applicant has made the following applications to appear pro hac vice, pursuant to Rule 39, within the previous three (3) years:

Title of Matter	Court/Agency	Date	Granted?
Landon Young and Heather Young v Chemguard, Inc, et al.	Maricopa County Superior Court	3/22/2021	Y

Exhibit A, the original verified application and Exhibit B, the original Certificate(s) of Good Standing are attached hereto.

DATED this 17<sup>th</sup> day of November 2021



Wendy Macias  
Resource Center Specialist  
State Bar of Arizona

Original Mailed on this 17<sup>th</sup> day of November 2021 to:

Justin Blaine Caresia  
Baker & Hostetler LLP  
811 MAIN ST STE 1100  
HOUSTON, TX 77002-6111

1 JUSTIN B. CARESIA (034007)  
2 BAKER & HOSTETLER LLP  
3 811 Main Street, Suite 1100  
4 Houston, TX 77002  
5 Telephone: 713.646.1358  
6 Facsimile: 713.751.1717  
7 jcaresia@bakerlaw.com

8 MATTHEW D. THURLOW  
9 (*pro hac vice application pending*)  
10 RENEE M. KNUDSEN  
11 (*pro hac vice application pending*)  
12 BAKER & HOSTETLER LLP  
13 1050 Connecticut Avenue NW, Suite 1100  
14 Washington, D.C. 20036  
15 mthurlow@bakerlaw.com  
16 rknuksen@bakerlaw.com

17 *Attorneys for Defendant Perimeter Solutions LP*

18 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

19 **IN AND FOR THE COUNTY OF COCONINO**

20 WESLEY FORBACH and EVENSTAR A.  
21 FORBACH, individually, and as husband  
22 and wife,

23 Plaintiffs,

24 v.

25 CHEMGUARD, INC., a Wisconsin  
26 corporation; PERIMETER SOLUTIONS  
LP, a Delaware limited partnership; and  
MATLICK ENTERPRISES, INC.,  
an Arizona corporation,

Defendants.

**Case No. S0300CV202100277**

**MOTION TO ASSOCIATE  
MATTHEW D. THURLOW  
PRO HAC VICE**

Justin B. Caresia, pursuant to Rule 39, Ariz. R. Sup. Ct., moves the Court to associate Matthew D. Thurlow as counsel *pro hac vice* in this action. In support of this motion and pursuant to Rule 39(a)(2)(E), the following original documents are attached:

1. Verified Application to Appear Pro Hac Vice;
2. Certificate(s) of Good Standing; and
3. State Bar of Arizona Notice of Receipt of Complete Application.

Justin B. Caresia hereby agrees to serve as local counsel in this matter and accepts the responsibilities detailed in Rule 39(a), Ariz. R. Sup. Ct.

DATED: December 1, 2021

Respectfully submitted,

/s/ Justin B. Caresia

JUSTIN B. CARESIA (034007)  
BAKER & HOSTETLER LLP  
811 Main Street, Suite 1100  
Houston, TX 77002  
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MATTHEW D. THURLOW  
(*pro hac vice application pending*)  
RENEE M. KNUDSEN  
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1050 Connecticut Ave. NW, Suite 1100  
Washington, D.C. 20036  
mthurlow@bakerlaw.com  
rknuksen@bakerlaw.com

*Counsel for Perimeter Solutions LP*

1 The foregoing was e-filed and a copy of  
2 the foregoing was delivered  
3 this 1st day of December 2021, to:

4 Patrick J. McGroder III  
5 Patrick J. McGroder IV  
6 BEUS GILBERY MCGRODER PLLC  
7 701 North 44<sup>th</sup> Street  
8 Phoenix, AZ 85008  
9 p3@beusgilbert.com  
10 pjmv@beusgilbert.com

11 Kerry Miller  
12 Jason W. Burge  
13 Danielle Teutonico  
14 FISHMAN HAYGOOD LLP  
15 201 St. Charles Ave., Floor 46  
16 New Orleans, LA 70170  
17 kmiller@fishmanhaygood.com  
18 jburge@fishmanhaygood.com  
19 dteutonico@fishmanhaygood.com  
20 *Attorneys for Plaintiffs*

21 Amy Levine Heiserman  
22 Eric B. Johnson  
23 QUARLES & BRADY LLP  
24 Renaissance One  
25 Two North Central Ave.  
26 Phoenix, AZ 85004  
amy.heiserman@quarles.com  
eric.johnson@quarles.com  
*Attorneys for Defendant Chemguard, Inc.*

Ellen Levy  
RESNICK & LOUIS PC  
8111 E. Indian Bend Rd.  
Scottsdale, Arizona 85250  
elevy@rlattorneys.com  
*Attorney for Matlick Enterprises, Inc.*

25 /s/ Justin B. Caresia

26 Justin B. Caresia

JUSTIN B. CARESIA (034007)  
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811 Main Street, Suite 1100  
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Telephone: 713.646.1358  
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MATTHEW D. THURLOW  
(*pro hac vice application pending*)  
RENEE M. KNUDSEN  
(*pro hac vice application pending*)  
BAKER & HOSTETLER LLP  
1050 Connecticut Avenue NW, Suite 1100  
Washington, D.C. 20036  
mthurlow@bakerlaw.com  
rknudsen@bakerlaw.com

*Attorneys for Defendant Perimeter Solutions LP*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF COCONINO**

WESLEY FORBACH and EVENSTAR A.  
FORBACH, individually, and as husband  
and wife,

Plaintiffs,

v.

CHEMGUARD, INC., a Wisconsin  
corporation; PERIMETER SOLUTIONS  
LP, a Delaware limited partnership; and  
MATLICK ENTERPRISES, INC.,  
an Arizona corporation,

Defendants.

**Case No. S0300CV202100277**

**[PROPOSED] ORDER RE: MOTION  
TO ASSOCIATE RENEE M.  
KNUDSEN PRO HAC VICE**



Based on the Motion to Associate Counsel Pro Hac Vice of Justin B. Caresia and the consent of Justin B. Caresia to appear as local counsel, it is hereby ordered that Renee M. Knudsen be admitted *pro hac vice* as counsel for Defendant Perimeter Solutions, LP in this matter.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2021.

---



Attn: Pro Hac Vice Dept  
P.O. Box 842699  
Los Angeles, CA 90084-2699  
Phone: 602-340-7239

For Official Use Only

App# 1012960Bar Number# P231883CK # 499990 8505 00

Overnight or Hand Delivery:

4201 N. 24th St., Ste 100

Phoenix, AZ 85016-6266

## Application for Appearance Pro Hac Vice

**PART I: Applicant Information**Name of Applicant: Renee Marie KnudsenFirm/Company Name: Baker & Hostetler LLPOffice Address: 1050 Connecticut Avenue, NW, Suite 1100, Washington, DC, 20036Telephone: (202) 861-1599 Fax: (202) 861-1783 Email Address: rknudsen@bakerlaw.comResidence Address: 901 N. Monroe Street, #502, Arlington, VA, 22201Title of cause or case where applicant seeks to appear: Forbach, et al. v. Chemguard, et al.Docket Number: S0300CV202100277Court, Board, or Administrative Agency: Coconino County Superior CourtParty on whose behalf applicant seeks to appear: Perimeter Solutions, LP

Pursuant to Arizona Supreme Court Rule 39(a)(2), the applicant shall complete the information below:

Courts to Which Applicant Has Been Admitted:

(Attach additional pages if necessary)

VirginiaDistrict of Columbia

Date of Admission:

12/7/20164/15/2019

Bar Number:

908461615689☒ Applicant is a member in good standing in such courts.☒ Applicant is not currently disbarred or suspended in any court.

Applicant ☐ is / ☒ is not (select one) currently subject to any pending disciplinary proceeding or investigation by any court, agency or organization authorized to discipline attorneys at law. If yes, specify the jurisdiction, nature of investigation and contact information of the disciplinary authority investigating on an additional page.

In the preceding three (3) years, applicant has filed applications to appear as counsel under Ariz. R. Sup. Ct., Rule 39(a) in the following:

Title of Matter:

Young v. Chemguard et al

Docket #:

CV2020-17108

Court or Agency:

Maricopa Cnty. Sup. Ct.

App Granted? (Y/N)

Yes

This case or cause ☐ is / ☒ is not (select one) a related or consolidated matter for which applicant has previously applied to appear pro hac vice in Arizona. If this matter is a related or consolidated with any previous application, Applicant certifies that he/she will review and comply with appropriate rules of procedure as required in the underlying cause.

If applicable, please provide related or consolidated matter application or docket# \_\_\_\_\_



Page 2

**PART II: Local Counsel Information**Name of Arizona Local Counsel: Justin B. CaresiaState Bar of Arizona Number: 034007Address: 811 Main Street, Suite 1100, Houston, TX, 77002Telephone: (713) 646-1358 Fax: (713) 751-1717 Email Address: jcaresia@bakerlaw.com☒ Local Counsel is a member in good standing.☒ Local Counsel associating with a nonresident attorney in a particular cause shall accept joint responsibility with the nonresident attorney to the client, to opposing parties and counsel, and to court, board, or administrative agency in that particular cause.**PART III: Parties and Certification**

Name(s) of each party in this cause and name and address of all counsel of record:

Party:	Counsel of Record:	Address:
<u>Wesley Forbach; Evenstar A. Forbach</u>	<u>Patrick J. McGroder III</u>	<u>701 North 44th Street, Phoenix, AZ 85008</u>
<u>Chemguard, Inc.</u>	<u>Amy Levine Heiserman</u>	<u>Two North Central Ave. Phoenix, AZ 85004</u>
<u>Matlick Enterprises, Inc.</u>	<u>Ellen Levy</u>	<u>8111 E. Indian Bend Rd. Scottsdale, AZ 85250</u>
<u>Perimeter Solutions, LP</u>	<u>Justin B. Caresia</u>	<u>811 Main Street, Ste. 1100, Houston, TX, 77002</u>

☒ Applicant is including with this application a nonrefundable application fee, payable to the State Bar of Arizona, in the amount of \$505.00. Fifteen percent of the non-refundable application fee paid pursuant to this section shall be deposited into a civil legal services fund to be distributed by the Arizona Foundation for Legal Services and Education entirely to approved legal services organizations, as that term is defined in subparagraph (2)(c) of this rule.☒ Applicant is furnishing a certificate from the state bar or from the clerk of the highest admitting court of each state, territory, or insular possession of the United States in which the nonresident attorney has been admitted to practice law certifying the nonresident attorney's date of admission to such jurisdiction and the current status of the nonresident attorney's membership or eligibility to practice therein. The certificate furnished shall be no more than forty-five (45) days old.

Applicant certifies the following:

1. Applicant shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the law of this state governing the conduct of attorneys to the same extent as an active member of the State Bar of Arizona, as provided in Ariz. R. Sup. Ct. Rule 46(b).
2. Applicant will review and comply with appropriate rules of procedure as required in the underlying cause.
3. Applicant understands and shall comply with the standards of conduct required of members of the State Bar of Arizona.

**Verification**

STATE OF Michigan )  
 County of Washtenaw ) ss.

I, Renee Marie Knudsen, swear that all statements in the application are true, correct and complete to the best of my knowledge and belief.Dated: 10/06/2021Applicant's Signature: Renee M. Knudsen

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_  
Name of Applicant\_\_\_\_\_  
Notary Public

## COVID-19 Temporary Verification

This Form is intended to be a required supplement to State Bar of Arizona applications and certifications during the period of pandemic health advisories and the related emergency orders of the federal government, the Governor of Arizona, and the Supreme Court of Arizona. This unsworn declaration, under penalty of perjury, is to be submitted in lieu of a notarized verification pursuant to Arizona Rules of Civil Procedure, Rule 80(c).

State of Michigan )  
County of Washtenaw ) ss.

I, Renee Marie Knudsen, a member of the State Bar of DC and VA, submit this unsworn verification in support of my:

- ☐ Resignation of Membership
- ☒ Application for Appearance *Pro Hac Vice*
- ☐ Application for In-House Counsel certification
- ☐ Application for transfer to Inactive / Retired status
- ☐ Application for Reinstatement after Summary Suspension by the Board of Governors

I hereby declare and verify, under the penalty of perjury, that the foregoing information and that on the applicable application form is true and correct.

Dated: 10/6/2021

Renee M. Knudsen  
Attorney signature





On behalf of JULIO A. CASTILLO, Clerk of the District of Columbia Court of Appeals,  
the District of Columbia Bar does hereby certify that

*Rence Marie Knudsen*

was duly qualified and admitted on April 15, 2019 as an attorney and counselor entitled to  
practice before this Court; and is, on the date indicated below, a(n)  
ACTIVE member in good standing of this Bar.

In Testimony Whereof,  
I have hereunto subscribed my  
name and affixed the seal of this  
Court at the City of  
Washington, D.C., on October  
6, 2021.

A handwritten signature in black ink, which appears to read "Julio A. Castillo".

JULIO A. CASTILLO  
Clerk of the Court

Issued By:

A handwritten signature in black ink, which appears to read "Knudsen".  
District of Columbia Bar Membership

For questions or concerns, please contact the D.C. Bar Membership Office at 202-626-3475 or email  
[memberservices@dcbar.org](mailto:memberservices@dcbar.org).

# Supreme Court of Virginia

AT RICHMOND

## Certificate

I, Muriel-Theresa Pitney, Acting Clerk of the Supreme Court of Virginia,

do hereby certify that

Renee Marie Knudsen

was admitted to practice as an attorney and counsellor at the bar of this Court on December 7, 2016.

I further certify that so far as the records of this office are concerned, Renee Marie Knudsen is a member of the bar of this Court in good standing.

Witness my hand and seal of said Court

This 29th day of September

A.D. 2021

By:   
Deputy Clerk

## Coconino County Superior Court

Forbach, et al.,  
Plaintiff

v.

Chemguard, et al.,  
Defendant.

CASE # S0300CV202100277

SBA App #1012960

**NOTICE OF RECEIPT OF COMPLETE  
APPLICATION**

NOTICE IS HEREBY given by THE STATE BAR OF ARIZONA that it has received the verified application and fee from Renee Marie Knudsen.

In addition to this application, applicant has made the following applications to appear pro hac vice, pursuant to Rule 39, within the previous three (3) years:

Title of Matter	Court/Agency	Date	Granted?
Young v Chemguard, et al.	Maricopa County Superior Court	3/22/2021	Y

Exhibit A, the original verified application and Exhibit B, the original Certificate(s) of Good Standing are attached hereto.

DATED this 17<sup>th</sup> day of November 2021



Wendy Macias  
Resource Center Specialist  
State Bar of Arizona

Original Mailed on this 17<sup>th</sup> day of November 2021 to:

Justin Blaine Caresia  
Baker & Hostetler LLP  
811 MAIN ST STE 1100  
HOUSTON, TX 77002-6111



1 JUSTIN B. CARESIA (034007)  
2 BAKER & HOSTETLER LLP  
3 811 Main Street, Suite 1100  
4 Houston, TX 77002  
5 Telephone: 713.646.1358  
6 Facsimile: 713.751.1717  
7 jcaresia@bakerlaw.com

8 MATTHEW D. THURLOW  
9 (*pro hac vice application pending*)  
10 RENEE M. KNUDSEN  
11 (*pro hac vice application pending*)  
12 BAKER & HOSTETLER LLP  
13 1050 Connecticut Avenue NW, Suite 1100  
14 Washington, D.C. 20036  
15 mthurlow@bakerlaw.com  
16 rknuksen@bakerlaw.com

17 *Attorneys for Defendant Perimeter Solutions LP*

18 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

19 **IN AND FOR THE COUNTY OF COCONINO**

20 WESLEY FORBACH and EVENSTAR A.  
21 FORBACH, individually, and as husband  
22 and wife,

23 Plaintiffs,

24 v.

25 CHEMGUARD, INC., a Wisconsin  
26 corporation; PERIMETER SOLUTIONS  
LP, a Delaware limited partnership; and  
MATLICK ENTERPRISES, INC.,  
an Arizona corporation,

Defendants.

**Case No. S0300CV202100277**

**MOTION TO ASSOCIATE  
RENEE M. KNUDSEN  
PRO HAC VICE**

Justin B. Caresia, pursuant to Rule 39, Ariz. R. Sup. Ct., moves the Court to associate Renee M. Knudsen as counsel *pro hac vice* in this action. In support of this motion and pursuant to Rule 39(a)(2)(E), the following original documents are attached:

1. Verified Application to Appear Pro Hac Vice;
2. Certificate(s) of Good Standing; and
3. State Bar of Arizona Notice of Receipt of Complete Application.

Justin B. Caresia hereby agrees to serve as local counsel in this matter and accepts the responsibilities detailed in Rule 39(a), Ariz. R. Sup. Ct.

DATED: December 1, 2021

Respectfully submitted,

/s/ Justin B. Caresia

JUSTIN B. CARESIA (034007)  
BAKER & HOSTETLER LLP  
811 Main Street, Suite 1100  
Houston, TX 77002  
Telephone: 713.646.1358  
Facsimile: 713.751.1717  
jcaresia@bakerlaw.com

MATTHEW D. THURLOW  
(*pro hac vice application pending*)  
RENEE M. KNUDSEN  
(*pro hac vice application pending*)  
BAKER & HOSTETLER LLP  
1050 Connecticut Ave. NW, Suite 1100  
Washington, D.C. 20036  
mthurlow@bakerlaw.com  
rknudsen@bakerlaw.com

*Counsel for Perimeter Solutions LP*

1 The foregoing was e-filed and a copy of  
2 the foregoing was delivered  
3 this 1st day of December 2021, to:

4 Patrick J. McGroder III  
5 Patrick J. McGroder IV  
6 BEUS GILBERY MCGRODER PLLC  
7 701 North 44<sup>th</sup> Street  
8 Phoenix, AZ 85008  
9 p3@beusgilbert.com  
10 pjmv@beusgilbert.com

11 Kerry Miller  
12 Jason W. Burge  
13 Danielle Teutonico  
14 FISHMAN HAYGOOD LLP  
15 201 St. Charles Ave., Floor 46  
16 New Orleans, LA 70170  
17 kmiller@fishmanhaygood.com  
18 jburge@fishmanhaygood.com  
19 dteutonico@fishmanhaygood.com  
20 *Attorneys for Plaintiffs*

21 Amy Levine Heiserman  
22 Eric B. Johnson  
23 QUARLES & BRADY LLP  
24 Renaissance One  
25 Two North Central Ave.  
26 Phoenix, AZ 85004  
amy.heiserman@quarles.com  
eric.johnson@quarles.com  
*Attorneys for Defendant Chemguard, Inc.*

Ellen Levy  
RESNICK & LOUIS PC  
8111 E. Indian Bend Rd.  
Scottsdale, Arizona 85250  
elevy@rlattorneys.com  
*Attorney for Matlick Enterprises, Inc.*

25 /s/ Justin B. Caresia

26 Justin B. Caresia

**BEUS GILBERT MCGRODER PLLC**

ATTORNEYS AT LAW

701 NORTH 44TH STREET

PHOENIX, ARIZONA 85008

TELEPHONE (480) 429-3000

Patrick J. McGroder III (002598)

Patrick J. McGroder IV (030815)

[p3@beusgilbert.com](mailto:p3@beusgilbert.com)

[pjmiv@beusgilbert.com](mailto:pjmiv@beusgilbert.com)

Kerry Miller, *pro hac pending*

Jason W. Burge, *pro hac pending*

Danielle Teutonico, *pro hac pending*

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[jburge@fishmanhaygood.com](mailto:jburge@fishmanhaygood.com)

[dteutonico@fishmanhaygood.com](mailto:dteutonico@fishmanhaygood.com)

*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF COCONINO**

WESLEY FORBACH and EVENSTAR A.  
FORBACH, individually, and as husband  
and wife,

Plaintiffs,

v.

CHEMGUARD, INC., a Wisconsin  
corporation; PERIMETER SOLUTIONS LP,  
a Delaware limited partnership; and MATLICK  
ENTERPRISES, INC., an Arizona corporation,

Defendants.

Case No. S0300CV202100277

**(PROPOSED) SCHEDULING  
ORDER**

UPON CONSIDERATION of the Parties' Proposed Scheduling Order, the Court  
orders as follows:

- 1 **1. INITIAL DISCLOSURE:** The Parties shall exchange Initial Disclosure Statements  
2 on or before November 22, 2021.
- 3 **2. EXPERT WITNESS DISCLOSURE:** Plaintiff shall disclose the identity and  
4 opinions of experts by September 15, 2022. Defendants shall disclose the identity and  
5 opinions of their experts by October 17, 2022. Any rebuttal experts' opinions will be  
6 disclosed by November 15, 2022.
- 7 **3. LAY (NON-EXPERT) WITNESS DISCLOSURE:** The parties shall disclose lay  
8 witnesses by May 2, 2022, with ongoing disclosures per the rules and final disclosures  
9 as stated herein.
- 10 **4. FINAL SUPPLEMENTAL DISCLOSURE:** Each party shall provide final  
11 supplemental disclosure, including final supplementation of witnesses, exhibits,  
12 disclosure statements, discovery responses, and medical literature to be used at trial,  
13 whether for use on direct examination, cross-examination, or otherwise by December  
14 15, 2022. This order does not replace the parties' obligation to seasonably disclose Rule  
15 26.1 information on an ongoing basis and as it becomes available.  
16 **No party shall use any lay witness, expert witness, expert opinion, or exhibit at**  
17 **trial not disclosed in a timely manner, except under order of the Court for good**  
18 **cause shown or upon a written or an on-the-record agreement of the parties.**
- 19 **5. DISCOVERY DEADLINES:**
  - 20 A. The parties shall undertake discovery in two phases in this case. Phase 1 shall  
21 include discovery regarding the sales, purchases, and distribution of firefighting  
22 foam products containing, or alleged to contain, per-and polyfluoroalkyl  
23 substances ("PFAS") to the Flagstaff Fire Department, and discovery concerning  
24 plaintiffs' allegations that Class A foams contain PFAS for purposes of  
25

1 identifying the products at issue. Phase 2 shall include discovery on all matters  
2 at issue in this case. Notwithstanding the topics included in Phase 1 above, the  
3 Parties shall be entitled to conduct further discovery regarding the Defendants'  
4 general sales and distribution practices relating to firefighting foam during Phase  
5 2.

6 B. The parties will propound discovery undertaken pursuant to Rules 33, 34, 35,  
7 36, and 45 for Phase 1 discovery by January 7, 2022.

8 C. The parties will propound discovery undertaken pursuant to Rules 33, 34, 36,  
9 and 45 for Phase 2 discovery by August 5, 2022. The parties will propound all  
10 discovery undertaken pursuant to Rule 35 for Phase 2 discovery by August 31,  
11 2022.

12 D. The parties will complete the depositions of parties for Phase 1 discovery by  
13 March 15, 2022.

14 E. The parties will complete the depositions of parties and lay witnesses for Phase  
15 2 discovery by August 30, 2022.

16 F. The parties will complete the depositions of expert witnesses by December 30,  
17 2022.

18 G. The parties will complete all other discovery by December 30, 2022 ("Complete  
19 discovery" includes conclusion of all depositions and supplementations of  
20 responses to written discovery).

21 **6. PRIVATE MEDIATION:** The parties agree to a private mediation by January 31,  
22 2023.

1 **7. DISPOSITIVE MOTIONS AND TRIAL:**

- 2 A. The parties shall file dispositive motions relating to Phase 1 of the case by June  
3 1, 2022.
- 4 B. The parties shall file all dispositive motions by March 2, 2023.
- 5 C. The parties propose a trial date of no later than May 31, 2023.
- 6 D. The parties believe the trial will last ten (10) days.

7 **8. TRIAL SETTING CONFERENCE:**

- 8 A. On March 20, 2023, or another time chosen by the Court, the Court will conduct  
9 a telephonic trial setting conference. Attorneys and self-represented parties shall  
10 have their calendars available for the conference.
- 11 B. Plaintiff will initiate the conference call by arranging for the presence of all other  
12 counsel and self-represented parties, and by calling this division at (602) 372-  
13 5945 at the scheduled time.

14 **9. FIRM DATES:**

- 15 A. No stipulation of the parties that alters a filing deadline or a hearing date  
16 contained in this scheduling order will be effective without an order of this Court  
17 approving the stipulation.
- 18 B. Dates set forth in this order that govern court filings or hearings are firm dates,  
19 and may be modified only with this Court's consent and for good cause.
- 20 C. This Court ordinarily will not consider a lack of preparation good cause.

21 **10. FURTHER ORDERS:** The court further orders as follows:

22 Date: \_\_\_\_\_  
23 Judge of the Superior Court  
24  
25



**BEUS GILBERT MCGRODER PLLC**

ATTORNEYS AT LAW

701 NORTH 44TH STREET

PHOENIX, ARIZONA 85008

TELEPHONE (480) 429-3000

Patrick J. McGroder III (002598)

Patrick J. McGroder IV (030815)

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WESLEY FORBACH and EVENSTAR A.  
FORBACH, individually, and as husband  
and wife,

Plaintiffs,

v.

CHEMGUARD, INC., a Wisconsin  
corporation; PERIMETER SOLUTIONS LP,  
a Delaware limited partnership; and MATLICK  
ENTERPRISES, INC., an Arizona corporation,

Defendants.

No. S-0300-CV-202100277

**JOINT REPORT**

The parties signing below certify they have conferred about the matters set forth in Rule 16(b)(2) and (c)(3) and that this case is not subject to the mandatory arbitration

provisions of Rule 72. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

**1. BRIEF DESCRIPTION OF THE CASE:**

Wesley Forbach is a firefighter for the Flagstaff Fire Department and has been allegedly exposed to AFFF firefighting foams which contain PFAS, fluorinated synthetical chemical compounds whose family includes PFOS and PFOA. After over a decade of service with the Flagstaff Fire Department and alleged use of AFFF firefighting foams, Wesley was diagnosed with testicular cancer with a tumor. Wesley underwent an orchiectomy removing one of his testicles and, after that testicle tested positive for cancer, chemotherapy.

Plaintiffs are claiming that the defendants that both manufactured and distributed AFFFs (hereinafter “Manufacturer Defendants,” which include Chemguard, Inc. and Perimeter Solutions LP and “Distributor Defendant,” which includes Matlick Enterprises, Inc. d/b/a United Fire Equipment Company) are liable to Plaintiffs under a strict products liability theory. Plaintiffs also allege that the Manufacturer Defendants are liable to Plaintiffs under a negligent failure to warn theory, negligent plan or design theory, and are liable to Plaintiffs for punitive damages. Lastly, Plaintiffs allege loss of consortium claims against Defendants on behalf of Evanstar A. Forbach, Wesley’s wife. Defendants’ dispute the alleged liability, causation, and damages.

**2. CURRENT CASE STATE:** The case was filed in state court on May 20, 2021. Defense Counsel for Defendant Matlick Enterprises, Inc. d/b/a United Fire answered the complaint on July 29, 2021. Defense Counsel for Defendant Perimeter Solutions LP answered the complaint on September 10, 2021. Defense Counsel for Defendants Chemguard, Inc. answered the complaint on October 11, 2021. Counsel for Plaintiffs served initial disclosures on all parties on November 22, 2021. Counsel for Defendant Perimeter

Solutions LP served initial disclosures on all parties on October 11, 2021. Counsel for Defendants Chemguard, Inc. and Counsel for Matlick Enterprises, Inc. served their initial disclosures on all parties on November 10, 2021.

**3. AMENDMENTS:** The parties do not anticipate filing an amendment to any pleadings adding a new party to the case.

**4. SETTLEMENT:** The parties agree to engage in a mediation with a private mediator. The parties will be ready for a private mediation by January 31, 2023.

**5. READINESS:** This case will be ready for trial by March 20, 2023.

**6. JURY:** A trial by jury is demanded.

**7. LENGTH OF TRIAL:** The estimated length of trial is ten (10) days.

**8. PREFERENCE:** This case is not entitled to a preference for trial.

**9. SPECIAL REQUIREMENTS:** The parties will not require disability accommodations or an interpreter.

**10. SCHEDULING CONFERENCE:** The parties do not request a Rule 16(d) scheduling conference.

**11. OTHER MATTERS:** There are no other matters the parties wish to bring to the Court's attention that may affect management of this case.

**ITEMS UPON WHICH THE PARTIES DO NOT AGREE:** \_\_\_\_\_.

DATED this 13th day of December, 2021.

**BEUS GILBERT MCGRODER PLLC**

By /s/ Patrick J. McGroder III

Patrick J. McGroder III

Alex Morris

Patrick J. McGroder IV

**FISHMAN HAYGOOD LLP**

Kerry J. Miller  
Jason W. Burge  
Danielle Teutonico  
*Attorneys for Plaintiffs*

**BAKERHOSTETLER**

By: /s/ Matthew D. Thurlow w/permission  
Matthew D. Thurlow  
*Attorneys for Defendant Perimeter Solutions,  
LP*

**QUARLES & BRADY, LLP**

By: /s/ Eric B. Johnson w/permission  
Eric B. Johnson  
*Attorneys for Defendant Chemguard, Inc.*

**RESNICK & LOUIS, P.C.**

By: /s/ Sharon A. Briggs w/permission  
Sharon A. Briggs  
*Attorneys for Defendant Matlick Enterprises,  
Inc.*

Efiled this 13<sup>th</sup> day of December, 2021, with a  
copy sent via the TurboCourt eservice system to:

Honorable Valerie Wyant  
Clerk of the Superior Court  
200 N San Francisco Street  
Flagstaff, AZ 86001

/s/ Deborah A. Francis

851297



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7 jcaresia@bakerlaw.com

8 MATTHEW D. THURLOW  
9 (*pro hac vice application pending*)  
10 RENEE M. KNUDSEN  
11 (*pro hac vice application pending*)  
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16 rknuksen@bakerlaw.com

17 *Attorneys for Defendant Perimeter Solutions LP*

18 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

19 **IN AND FOR THE COUNTY OF COCONINO**

20 WESLEY FORBACH and EVENSTAR A.  
21 FORBACH, individually, and as husband  
22 and wife,

23 **Plaintiffs,**

24 **v.**

25 CHEMGUARD, INC., a Wisconsin  
26 corporation; PERIMETER SOLUTIONS  
LP, a Delaware limited partnership; and  
MATLICK ENTERPRISES, INC.,  
an Arizona corporation,

**Defendants.**

**Case No. CV2021-00277**

**ORDER RE: MOTION TO  
ASSOCIATE MATTHEW D.  
THURLOW PRO HAC VICE**

1 Based on the Motion to Associate Counsel Pro Hac Vice of Justin B. Caresia and  
2 the consent of Justin B. Caresia to appear as local counsel, it is hereby ordered that  
3 Matthew D. Thurlow be admitted *pro hac vice* as counsel for Defendant Perimeter  
4 Solutions, LP in this matter.

5  
6 DATED this December 17, 2021

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10 Hon. Ted S. Reed  
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18 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

19 **IN AND FOR THE COUNTY OF COCONINO**

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21 FORBACH, individually, and as husband  
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23 **Plaintiffs,**

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25 CHEMGUARD, INC., a Wisconsin  
26 corporation; PERIMETER SOLUTIONS  
LP, a Delaware limited partnership; and  
MATLICK ENTERPRISES, INC.,  
an Arizona corporation,

**Defendants.**

**Case No. CV2021-00277**

**ORDER RE: MOTION TO  
ASSOCIATE RENEE M. KNUDSEN  
PRO HAC VICE**

1 Based on the Motion to Associate Counsel Pro Hac Vice of Justin B. Caresia and  
2 the consent of Justin B. Caresia to appear as local counsel, it is hereby ordered that Renee  
3 M. Knudsen be admitted *pro hac vice* as counsel for Defendant Perimeter Solutions, LP  
4 in this matter.

5  
6 DATED this December 17, 2021.

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Nj

Hon. Ted S. Reed

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 Jason W. Burge, *pro hac vice pending*  
 Danielle Teutonico, *pro hac vice pending*  
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*Attorneys for Plaintiff*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
 IN AND FOR THE COUNTY OF COCONINO**

WESLEY FORBACH and EVENSTAR  
 A. FORBACH, individually, and as  
 husband and wife,

Plaintiffs,

v.

CHEMGUARD, INC., a Wisconsin  
 corporation; PERIMETER SOLUTIONS  
 LP, a Delaware limited partnership; and  
 MATLICK ENTERPRISES, INC., an  
 Arizona corporation,

Defendants.

Case No. S-0300-CV-202100277

**NOTICE OF SUBSTITUTION OF  
 COUNSEL FOR PLAINTIFFS**

(Assigned to the Hon. Ted Reed)

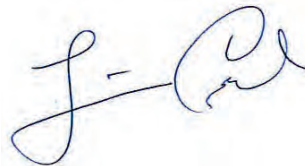
Plaintiffs, by and through undersigned counsel, hereby give notice of the substitution of  
 counsel. Lincoln Combs of the firm O'Steen & Harrison, PLC is replacing Patrick J. McGroder

III and Patrick J. McGroder IV of the firm Beus Gilbert McGroder PLLC as counsel on behalf of Plaintiffs, joining Plaintiffs' current counsel. Notices for Mr. Combs can be sent to:

Lincoln Combs, Esq.  
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300 W. Clarendon Ave., Suite 400  
Phoenix, Arizona 85013-3424  
[lcombs@vanosteen.com](mailto:lcombs@vanosteen.com)  
[klane@vanosteen.com](mailto:klane@vanosteen.com)

DATED this 5th day of January, 2022.

**O'STEEN & HARRISON, PLC**



---

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**FISHMAN HAYGOOD LLP**

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Jason W. Burge  
Danielle Teutonico  
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*Attorneys for Plaintiff*

**ORIGINAL** of the foregoing e-filed  
this 5th day of January, 2022 with:

TurboCourt.com  
Clerk of the Court  
Coconino County Superior Court





1 **COPY** of the foregoing e-mailed  
2 this 5th day of January, 2022 to:

3 The Honorable Ted Reed  
4 Coconino County Superior Court

5 **COPY** of the foregoing e-served  
6 this 5th day of January, 2022 to:

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31 (602) 456-6776  
32 (602) 456-6256 FAX





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2 *Attorneys for Defendant Matlick Enterprises, Inc.*

3 By /s/ Kat Lane

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*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA****IN AND FOR THE COUNTY OF COCONINO**

WESLEY FORBACH and EVENSTAR A.  
FORBACH, individually, and as husband  
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Plaintiffs,

v.

CHEMGUARD, INC., a Wisconsin  
corporation; PERIMETER SOLUTIONS LP,  
a Delaware limited partnership; and MATLICK  
ENTERPRISES, INC., an Arizona corporation,

Defendants.

Case No. CV2021-00277

**SCHEDULING ORDER**

UPON CONSIDERATION of the Parties' Proposed Scheduling Order, the Court  
orders as follows:

- 1 **1. INITIAL DISCLOSURE:** The Parties shall exchange Initial Disclosure Statements  
2 on or before November 22, 2021.
- 3 **2. EXPERT WITNESS DISCLOSURE:** Plaintiff shall disclose the identity and  
4 opinions of experts by September 15, 2022. Defendants shall disclose the identity and  
5 opinions of their experts by October 17, 2022. Any rebuttal experts' opinions will be  
6 disclosed by November 15, 2022.
- 7 **3. LAY (NON-EXPERT) WITNESS DISCLOSURE:** The parties shall disclose lay  
8 witnesses by May 2, 2022, with ongoing disclosures per the rules and final disclosures  
9 as stated herein.
- 10 **4. FINAL SUPPLEMENTAL DISCLOSURE:** Each party shall provide final  
11 supplemental disclosure, including final supplementation of witnesses, exhibits,  
12 disclosure statements, discovery responses, and medical literature to be used at trial,  
13 whether for use on direct examination, cross-examination, or otherwise by December  
14 15, 2022. This order does not replace the parties' obligation to seasonably disclose Rule  
15 26.1 information on an ongoing basis and as it becomes available.  
16 **No party shall use any lay witness, expert witness, expert opinion, or exhibit at**  
17 **trial not disclosed in a timely manner, except under order of the Court for good**  
18 **cause shown or upon a written or an on-the-record agreement of the parties.**
- 19 **5. DISCOVERY DEADLINES:**
  - 20 A. The parties shall undertake discovery in two phases in this case. Phase 1 shall  
21 include discovery regarding the sales, purchases, and distribution of firefighting  
22 foam products containing, or alleged to contain, per-and polyfluoroalkyl  
23 substances ("PFAS") to the Flagstaff Fire Department, and discovery concerning  
24 plaintiffs' allegations that Class A foams contain PFAS for purposes of  
25



1 identifying the products at issue. Phase 2 shall include discovery on all matters  
2 at issue in this case. Notwithstanding the topics included in Phase 1 above, the  
3 Parties shall be entitled to conduct further discovery regarding the Defendants'  
4 general sales and distribution practices relating to firefighting foam during Phase  
5 2.

6 B. The parties will propound discovery undertaken pursuant to Rules 33, 34, 35,  
7 36, and 45 for Phase 1 discovery by January 7, 2022.

8 C. The parties will propound discovery undertaken pursuant to Rules 33, 34, 36,  
9 and 45 for Phase 2 discovery by August 5, 2022. The parties will propound all  
10 discovery undertaken pursuant to Rule 35 for Phase 2 discovery by August 31,  
11 2022.

12 D. The parties will complete the depositions of parties for Phase 1 discovery by  
13 March 15, 2022.

14 E. The parties will complete the depositions of parties and lay witnesses for Phase  
15 2 discovery by August 30, 2022.

16 F. The parties will complete the depositions of expert witnesses by December 30,  
17 2022.

18 G. The parties will complete all other discovery by December 30, 2022 ("Complete  
19 discovery" includes conclusion of all depositions and supplementations of  
20 responses to written discovery).

21 6. **PRIVATE MEDIATION:** The parties agree to a private mediation by January 31,  
22 2023.

1 **7. DISPOSITIVE MOTIONS AND TRIAL:**

- 2 A. The parties shall file dispositive motions relating to Phase 1 of the case by June  
3 1, 2022.
- 4 B. The parties shall file all dispositive motions by March 2, 2023.
- 5 C. The parties propose a trial date of no later than May 31, 2023.
- 6 D. The parties believe the trial will last ten (10) days.

7 **8. CASE MANAGEMENT CONFERENCE**

8 A Case Management Conference is set on **April 18, 2022 at 1:45 p.m., via**  
9 **Zoom**. Parties shall appear with the following Zoom link:

10 <https://zoom.us/j/98284682810>

11 Meeting ID: 982 8468 2810

12 **9. FIRM DATES:**

- 13 A. No stipulation of the parties that alters a filing deadline or a hearing date  
14 contained in this scheduling order will be effective without an order of this Court  
15 approving the stipulation.
- 16 B. Dates set forth in this order that govern court filings or hearings are firm dates,  
17 and may be modified only with this Court's consent and for good cause.
- 18 C. This Court ordinarily will not consider a lack of preparation good cause.

19 **10. FURTHER ORDERS:** The court further orders as follows:

20  
21 Date: January 29, 2022.

22  
23   
24 Judge of the Superior Court  
25



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[dteutonico@fishmanhaygood.com](mailto:dteutonico@fishmanhaygood.com)

*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF COCONINO**

WESLEY FORBACH and EVENSTAR A.  
FORBACH, individually, and as husband and  
wife;

Plaintiffs,

v.

CHEMGUARD, INC.; A Wisconsin corporation;  
PERIMETER SOLUTIONS LP, a Delaware  
limited partnership; and MATLICK  
ENTERPRISES, INC. an Arizona corporation,

Defendants.

No. S0300CV202100277

**[PROPOSED] ORDER TO  
WITHDRAW AS COUNSEL FOR  
PLAINTIFFS**

(Honorable Ted Reed)

1 Having considered the Motion to Withdraw filed by attorneys Patrick J. McGroder  
2 III and Patrick J. McGroder IV, and finding no prejudice to their clients,

3 **IT IS HEREBY ORDERED** granting the Motion to Withdraw pursuant to  
4 Arizona Rule of Civil Procedure 5.3(2)(B)(ii).

5 Attorneys Patrick J. McGroder III and Patrick J. McGroder IV are hereby  
6 withdrawn from this case.

7 DATED this \_\_\_\_ day of \_\_\_\_\_, 2022.

8 \_\_\_\_\_  
9 Honorable Ted Reed  
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*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF COCONINO**

WESLEY FORBACH and EVENSTAR A.  
FORBACH, individually, and as husband and  
wife;

Plaintiffs,

v.

CHEMGUARD, INC.; A Wisconsin corporation;  
PERIMETER SOLUTIONS LP, a Delaware  
limited partnership; and MATLICK  
ENTERPRISES, INC. an Arizona corporation,

Defendants.

No. S0300CV202100277

**MOTION TO WITHDRAW AS  
COUNSEL FOR PLAINTIFFS**

Pursuant to Rule Pursuant to Rule 5.3(a)(2)(B)(ii) of the Arizona Rules of Civil Procedure, Patrick J. McGroder III and Patrick J. McGroder IV of Beus Gilbert McGroder PLLC, through undersigned counsel, hereby submits this Motion to Withdraw as counsel of record for Plaintiffs, Wesley Forbach and Evenstar A. Forbach in the above-captioned matter.

Withdrawal is appropriate because the Plaintiffs have associated new legal co-counsel, Lincoln Combs of the firm of O'Steen & Harrison, PLC who has entered an appearance by filing a Notice of Substitution of Counsel on January 5, 2022 with the Court with Plaintiffs approval. Fishman Haygood, LLP will continue to remain as plaintiffs' counsel.

For the foregoing reasons, undersigned counsel requests this Court grant this Motion to Withdraw as Attorney of Record for the Plaintiffs.

DATED this 14<sup>th</sup> day of February, 2022.

**BEUS GILBERT MCGRODER PLLC**

By /s/ Patrick J. McGroder III  
Patrick J. McGroder III  
Patrick J. McGroder IV

The foregoing E-filed and COPY of the foregoing delivered "via eFiling system" this 14<sup>th</sup> day of February, 2022, to:

Copies emailed this 14<sup>th</sup> day of February, 2022, to:

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Danielle Teutonico  
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17 *Attorneys for Defendant Perimeter Solutions, LP*

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*Attorneys for Defendant Matlick Enterprises, Inc.*

/s/ Deborah A. Francis



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FORBACH, individually, and as husband and  
wife;

Plaintiffs,

v.

CHEMGUARD, INC.; A Wisconsin corporation;  
PERIMETER SOLUTIONS LP, a Delaware  
limited partnership; and MATLICK  
ENTERPRISES, INC. an Arizona corporation,

Defendants.

No. CV2021-00277

**ORDER TO WITHDRAW AS  
COUNSEL FOR PLAINTIFFS**

(Honorable Ted Reed)

Having considered the Motion to Withdraw filed by attorneys Patrick J.  
McGroder III and Patrick J. McGroder IV, and finding no prejudice to their clients,

**DATED this February 17, 2022**

2



**Quarles & Brady LLP**

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*Attorneys for Defendant Chemguard, Inc.*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCONINO

WESLEY FORBACH, *et al.*,

Plaintiffs,

v.

CHEMGUARD, INC., *et al.*,

Defendants.

Case No. S-0300-CV-202100277

**DEFENDANT CHEMGUARD,  
INC.'S NOTICE OF NON-PARTIES  
AT FAULT**

Pursuant to Arizona Rule of Civil Procedure 26(b)(5) and Arizona Revised Statutes Section 12-2506(B), Defendant Chemguard, Inc. provides notice that the following individuals or entities may be wholly or partially at fault for the damages alleged by Plaintiffs. Discovery is ongoing and further investigation is continuing at this time, which may bring to light additional information regarding other non-parties at fault. Chemguard reserves the right to amend, supplement, or otherwise modify this disclosure. The following non-parties may be wholly or partially at fault:

1. Individuals or entities, including those not yet identified, that sold products to Plaintiffs, the City of Flagstaff, the Flagstaff Fire Department, or any other employer of Plaintiffs that may have caused or contributed to their purported injuries.

- 1           2.     Individuals or entities, including those not yet identified, with a duty to warn  
2           Plaintiffs that failed to provide adequate instructions or warnings related to  
3           the potential risks associated with the products that may have caused or  
4           contributed to Plaintiffs' alleged injuries.
- 5           3.     Individuals or entities, including those not yet identified, that altered or  
6           modified the products that may have caused or contributed to Plaintiffs'  
7           alleged injuries.
- 8           4.     Plaintiff Wesley Forbach's current or former employers, including but not  
9           limited to the Flagstaff Fire Department.
- 10          5.     City or government entities, including the Arizona Department of  
11          Environmental Quality, the Flagstaff Fire Department, and other fire  
12          departments near Flagstaff, Arizona.
- 13          6.     Flagstaff Pulliam Airport or other facilities currently or previously monitored,  
14          controlled, or operated by the United States.
- 15          7.     Private or public water treatment plants or water companies, including but not  
16          limited to the Flagstaff Water Department, City of Flagstaff, Arizona Water  
17          Company, EPCOR Water Company, Doney Park Water, City of Flagstaff  
18          Water Services, Kachina Village Utility, and Ponderosa Utility Corporation.
- 19          8.     Owners or operators of flood irrigation facilities.
- 20          9.     Without waiving any objection, any medical providers that may have  
21          provided negligent treatment to Plaintiff Wesley Forbach.
- 22          10.    Without waiving any objection, any individual or entity named by any other  
23          defendant in this matter as a potential non-party at fault.
- 24          11.    Without waiving any objection, any named party or co-defendant is dismissed  
25          from this lawsuit.
- 26



12. Without waiving any objection, any named party or co-defendant that settles with Plaintiffs before trial.

Chemguard reserves the right to amend or supplement this notice of non-parties at fault as it continues its investigation.

RESPECTFULLY SUBMITTED this 10th day of March, 2022.

By: /s/ Amy Levine Heiserman  
Eric B. Johnson  
Amy Levine Heiserman  
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*Counsel for Chemguard, Inc.*

**EFILED** with the Clerk of the Court and a **COPY** mailed and e-mailed this 10th day of March, 2022 to:

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*/s/ Kim Simmons*

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18 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

19 **IN AND FOR THE COUNTY OF COCONINO**

20 WESLEY FORBACH and EVENSTAR A.  
21 FORBACH, individually, and as husband  
22 and wife,

23 **Plaintiffs,**

24 **v.**

25 CHEMGUARD, INC., a Wisconsin  
26 corporation; PERIMETER SOLUTIONS  
LP, a Delaware limited partnership; and  
MATLICK ENTERPRISES, INC.,  
an Arizona corporation,

**Defendants.**

**Case No. S0300CV202100277**

**JOINDER IN DEFENDANT  
CHEMGUARD, INC.'S NOTICE OF  
NON-PARTIES AT FAULT**

1 Pursuant to Arizona Rules of Civil Procedure 26(b)(5) and A.R.S. § 12-2506(B),  
2 Defendant Perimeter Solutions LP ("Perimeter Solutions") hereby joins and adopts as  
3 though fully set forth herein the Notice of Non-Parties at Fault dated March 10, 2022,  
4 filed by Defendant Chenguard, Inc.

5 Perimeter Solutions reserves the right to identify additional non-parties at fault  
6 until it has the opportunity to complete its investigation and discovery concludes.

7  
8 DATED: March 11, 2022

Respectfully submitted,

9 /s/ Justin B. Caresia

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1 The foregoing was e-filed and a copy of  
2 the foregoing was delivered  
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